

Senate BILL NO. 350

*Wells 1/11/10*  
*you*

INTRODUCED BY

*Mattie Miller* *Stacy Hillard* *Kraeger*

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE COMMISSION FOR HUMAN RIGHTS, PROVIDING THAT THE COMMISSION MAY NOT HIRE ITS OWN STAFF, PROVIDING THAT THE STAFF OF THE COMMISSION IS NOT INDEPENDENT OF THE COMMISSION

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*DENNY* *Thomas* *Clark* *Prince* *Anderson* *Mr. Tom* *Schwarz*

OR OF LABOR; PROVIDING THAT COMMISSION STAFF MAY NOT FILE A COMPLAINT ON BEHALF OF ANOTHER PERSON; REQUIRING THE COMMISSION TO ADOPT THE MONTANA RULES OF CIVIL PROCEDURE, THE MONTANA RULES OF EVIDENCE, AND APPROPRIATE RULES OF THE MONTANA CODE OF CRIMINAL PROCEDURE AS PART OF ITS PROCEDURAL RULES; REQUIRING A PATTERN OR PRACTICE THAT SHOWS A CONSCIOUS AND INTENTIONAL DISREGARD FOR THE PROHIBITION AGAINST DISCRIMINATION IN HOUSING ADVERTISEMENTS BEFORE A VIOLATION OCCURS; PROVIDING THAT THE COMMISSION MAY NOT APPLY TO A DISTRICT COURT FOR A PRELIMINARY INJUNCTION AGAINST A RESPONDENT; REQUIRING COMMISSION STAFF TO INFORM A POTENTIAL RESPONDENT WITHIN 1 WORKING DAY AFTER RECEIPT OF A COMPLAINT; PREVENTING THE COMMISSION FROM REQUESTING A CHANGE OF VENUE IN A CONTESTED CASE HEARING; PROHIBITING COMMISSION STAFF FROM PETITIONING A DISTRICT COURT FOR ENFORCEMENT OF A COMMISSION ORDER; RESTRICTING THE COMMISSION FROM DENYING REMOVAL OF A CASE TO DISTRICT COURT; ALLOWING A RESPONDENT TO REMOVE A CASE TO DISTRICT COURT; REQUIRING A CASE REMOVED TO DISTRICT COURT TO BE HEARD DE NOVO; REVISING PENALTY PROVISIONS; PROVIDING THAT A PERSON MAY AVOID SELF-INCRIMINATION IN DISCRIMINATION CASES; AMENDING SECTIONS 2-15-1706, 49-2-203, 49-2-204, 49-2-305, 49-2-501, 49-2-503, 49-2-504, 49-2-505, 49-2-506, 49-2-508, 49-2-509, 49-2-510, AND 49-2-601, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

**NEW SECTION. Section 1. Purpose.** It is the intent of the legislature that the commission sit in independent judgment of complaints of alleged discrimination in Montana and that the commission staff operate under the direction and control of the commissioner of labor. The staff is not independent of the

1 commissioner. It is the intent of the legislature that the commission and the commission staff not favor  
 2 or assist, directly or indirectly, complainants or respondents with procedural or substantive matters of  
 3 discrimination in Montana. The commission shall maintain the highest standards of objectivity and  
 4 impartiality when judging cases asserting alleged discrimination in Montana.

5

6 **Section 2.** Section 2-15-1706, MCA, is amended to read:

7 **"2-15-1706. Commission for human rights -- allocation -- quasi-judicial.** (1) There is a commission  
 8 for human rights.

9 (2) The commission consists of five members appointed by the governor with the consent of the  
 10 senate.

11 (3) The commission is designated as a quasi-judicial board for the purposes of 2-15-124 and its  
 12 members ~~shall~~ must be compensated and receive travel expenses as provided for in 2-15-124.

13 (4) The commission is allocated to the department of labor and industry for administrative purposes  
 14 only as provided in 2-15-121, ~~except that the commission may hire its own personnel, may seek and~~  
 15 ~~receive private and federal funds in its own name, and may determine all matters of policy concerning the~~  
 16 ~~use of its budget. Subsection (2)(d) of 2-15-121 shall not apply for purposes of this section."~~

17

18 **Section 3.** Section 49-2-203, MCA, is amended to read:

19 **"49-2-203. Subpoena power.** (1) The commission may subpoena witnesses, take the testimony  
 20 of any person under oath, administer oaths, and, in connection therewith, require the production for  
 21 examination of books, papers, or other tangible evidence relating to a matter either under investigation by  
 22 ~~the commission staff~~ or in question before the commission. ~~The commission may delegate the foregoing~~  
 23 ~~powers to a person within the staff for the purpose of investigating a complaint.~~

24 (2) Subpoenas issued pursuant to this section may be enforced as provided in 2-4-104 of the  
 25 Montana Administrative Procedure Act."

26

27 **Section 4.** Section 49-2-204, MCA, is amended to read:

28 **"49-2-204. Commission to adopt rules.** The commission shall adopt procedural and substantive  
 29 rules necessary to implement this chapter. Rulemaking procedures ~~shall~~ must comply with the requirements  
 30 of the Montana Administrative Procedure Act. At a minimum, the commission shall adopt as part of its

1 procedural rules the Montana Rules of Civil Procedure and the Montana Rules of Evidence. The commission  
2 may adopt a portion of the Montana Code of Criminal Procedure, as it considers appropriate."  
3

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

5 **"49-2-305. Discrimination in housing -- exemptions.** (1) It is an unlawful discriminatory practice  
6 for the owner, lessee, or manager having the right to sell, lease, or rent a housing accommodation or  
7 improved or unimproved property or for any other person:

8 (a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of  
9 sex, marital status, race, creed, religion, color, age, familial status, physical or mental disability, or national  
10 origin;

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

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

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

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

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

29 (2) The rental of sleeping rooms in a private residence designed for single-family occupancy in  
30 which the owner also resides is excluded from the provisions of subsection (1); ~~provided that~~ if the owner

1 rents no more than three sleeping rooms within the residence.

2 (3) (a) Except as provided in subsection (3)(b), it is an unlawful discriminatory practice to make,  
3 print, or publish or cause to be made, printed, or published any notice, statement, or advertisement that  
4 indicates any preference, limitation, or discrimination that is prohibited by subsection (1) or any intention  
5 to make or have a prohibited preference, limitation, or discrimination.

6 (b) If the printing or publication of the notice, statement, or advertisement was by a person  
7 regularly engaged in the business of publishing classified housing notices, statements, or advertisements,  
8 subsection (3)(a) is not violated unless it is shown that the printing or publication of the notice, statement,  
9 or advertisement is part of a pattern or practice of printing or publishing notices, statements, or  
10 advertisements in violation of subsection (3)(a) that demonstrates a conscious and intentional disregard for  
11 the provisions of subsections (1) and (3)(a).

12 (4) It is an unlawful discriminatory practice for a person to discriminate because of a physical or  
13 mental disability of a buyer, lessee, or renter; a person residing in or intending to reside in or on the housing  
14 accommodation or property after it is sold, leased, rented, or made available; or any person associated with  
15 that buyer, lessee, or renter:

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

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

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

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

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

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

1 accommodation or property; or

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

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

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

8 (C) provides that all doors designed to allow passage into and within all premises within the  
9 housing accommodation are sufficiently wide to allow passage by a person with a disability who uses a  
10 wheelchair; and

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

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

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

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

17 (IV) usable kitchens and bathrooms that allow an individual who uses a wheelchair to maneuver  
18 about the space;

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

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

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

24 and

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

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

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

1 any of the following:

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

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

5 (B) secured by residential real estate; or

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

7 (8) It is an unlawful discriminatory practice to:

8 (a) deny a person access to or membership or participation in:

9 (i) a multiple-listing service;

10 (ii) a real estate brokers' organization; or

11 (iii) any other service, organization, or facility relating to the business of selling, leasing, or renting  
12 housing accommodations or property; or to

13 (b) discriminate against the person referred to in subsection (8)(a) in the terms or conditions of  
14 access, membership, or participation because of sex, marital status, race, creed, religion, age, familial  
15 status, physical or mental disability, color, or national origin.

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

20 (10) The prohibitions of this section against discrimination because of age and familial status do not  
21 extend to housing for older persons. "Housing for older persons" means housing:

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

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

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

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

1 occupies one of the living quarters as the owner's residence.

2 (12) For purposes of this section, "familial status" means having a child or children who live or will  
3 live with a person. A distinction based on familial status includes one that is based on the age of a child  
4 or children who live or will live with a person."  
5

6 **Section 6.** Section 49-2-501, MCA, is amended to read:

7 **"49-2-501. Filing complaints.** (1) A complaint may be filed by ~~or on behalf of~~ any person claiming  
8 to be aggrieved by any discriminatory practice prohibited by this chapter. The complaint must be in the form  
9 of a written, verified complaint stating the name and address of the person, educational institution, financial  
10 institution, or governmental entity or agency alleged to have engaged in the discriminatory practice and the  
11 particulars of the alleged discriminatory practice. ~~The commission staff may file a complaint in like manner~~  
12 ~~when a discriminatory practice comes to its attention.~~

13 (2) (a) Except as provided in 49-2-510 and subsection (2)(b) of this section, a complaint under this  
14 chapter must be filed with the commission within 180 days after the alleged unlawful discriminatory  
15 practice occurred or was discovered.

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

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

26 **Section 7.** Section 49-2-503, MCA, is amended to read:

27 **"49-2-503. Temporary relief by court order.** At any time after a complaint is filed under this  
28 chapter, a district court may, upon the application of ~~the commission or~~ the complainant, enter a preliminary  
29 injunction against a respondent in the case. The procedure for granting the order is as provided by statute  
30 for preliminary injunctions in civil actions."

1           **Section 8.** Section 49-2-504, MCA, is amended to read:

2           **"49-2-504. Informal settlement.** The commission staff shall informally investigate the matters set  
3 out in a filed complaint promptly and impartially. If the staff determines that the allegations are supported  
4 by ~~substantial~~ a preponderance of the evidence, it shall immediately try to eliminate the discriminatory  
5 practice by conference, conciliation, and persuasion. The staff shall, upon the first working day following  
6 receipt of a filed complaint, notify a potential respondent that the respondent is the subject of a filed  
7 complaint. The notification must be in writing and must include a copy of the filed complaint, together with  
8 all documents submitted to the commission or its staff with the complaint."

9

10           **Section 9.** Section 49-2-505, MCA, is amended to read:

11           **"49-2-505. Contested case hearing.** (1) If the informal efforts to eliminate the alleged  
12 discrimination are unsuccessful, the staff shall inform the commission of the failure and the commission  
13 shall cause written notice to be served, ~~together with a copy of the complaint,~~ requiring the person,  
14 educational institution, financial institution, or governmental entity or agency charged in the complaint to  
15 answer the allegations of the complaint at a hearing before the commission.

16           (2) The hearing must be held by the commission in the county where the unlawful conduct is  
17 alleged to have occurred unless the person, institution, entity, or agency charged in the complaint ~~or the~~  
18 ~~commission~~ requests a change of venue for good cause shown. The case in support of the complaint may  
19 be presented before the commission by ~~the staff,~~ the complainant, or an attorney representing the  
20 complainant. The hearing and any subsequent proceedings under this chapter must be held in accordance  
21 with the ~~Montana Administrative Procedure Act except as provided in 49-2-508~~ Rules of Civil Procedure.

22           (3) The commission may make provisions for defraying the expenses of an indigent party in a  
23 contested case hearing held pursuant to this chapter.

24           (4) The prevailing party in a hearing under this section may bring an action in district court for  
25 ~~attorneys' attorney~~ attorney fees. The court in its discretion may allow the prevailing party reasonable ~~attorneys'~~  
26 attorney fees. An action under this section must comply with the Montana Rules of Civil Procedure."

27

28           **Section 10.** Section 49-2-506, MCA, is amended to read:

29           **"49-2-506. Procedure upon a finding of discrimination.** (1) If the commission finds that a person,  
30 institution, entity, or agency against whom a complaint was filed has engaged in the discriminatory practice



1 alleged in the complaint, the commission shall order ~~him~~ the person or the institution, entity, or agency  
2 to refrain from engaging in the discriminatory conduct. The order may:

3 (a) prescribe conditions on the accused's future conduct relevant to the type of discriminatory  
4 practice found;

5 (b) require any reasonable measure to correct the discriminatory practice and to rectify any harm,  
6 pecuniary or otherwise, to the person discriminated against;

7 (c) require a report on the manner of compliance.

8 (2) ~~Except as provided in 49-2-510, the~~ The order may not require the payment of ~~any~~ punitive  
9 damages.

10 (3) Whenever a commission order or conciliation agreement requires inspection by the commission  
11 staff for a period of time to determine if the respondent is complying with that order or agreement, the  
12 period of time may not be more than ~~3 years~~ 1 year."

13  
14 **Section 11.** Section 49-2-508, MCA, is amended to read:

15 "**49-2-508. Enforcement of commission order.** If the commission's order is not obeyed, ~~the~~  
16 ~~commission staff~~ or a party may petition the district court in the county where the discriminatory practice  
17 occurred or in which the respondent resides or transacts business to enforce the commission's order by  
18 any appropriate order."

19  
20 **Section 12.** Section 49-2-509, MCA, is amended to read:

21 "**49-2-509. Filing a Removal of complaint in to district court.** (1) Except as provided in subsection  
22 (2) ~~or with respect to complaints alleging a violation of 49-2-305,~~ the commission staff shall, at the request  
23 of either party, issue a letter entitling the complainant or the respondent to ~~file~~ remove a discrimination  
24 action ~~in to~~ in district court if:

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

26 (b) ~~12 months have elapsed since the complaint was filed.~~

27 (2) The commission staff may not refuse to permit removal of a case to district court if unless:

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

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

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

3           ~~(d)(c)~~ the party requesting removal has unsuccessfully attempted through court litigation to prevent  
4 the commission staff from investigating the complaint.

5           (3) The commission ~~staff may~~ shall dismiss a complaint filed under ~~49-2-504~~ this chapter and ~~allow~~  
6 the complainant ~~to~~ may file a discrimination action in district court if:

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

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

10          (c) the commission ~~staff~~ determines that the allegations of the complaint are not supported by  
11 substantial evidence.

12          (4) A decision of the commission ~~staff~~ to dismiss a complaint brought under this chapter or to  
13 refuse to permit removal to the district court is final unless a party seeks review by filing objections within  
14 14 days after the decision is served on ~~him~~ the party. The commission shall review the decision in informal  
15 proceedings under 2-4-604, ~~except that 2-4-604(5) applies only to review of a refusal to permit removal.~~  
16 A party may ask the district court to review a decision of the commission made under this part. The review  
17 must be de novo.

18          (5) Within 90 days after receipt of a notice of dismissal under subsection (3) or an order under  
19 subsection (4) of affirmance of a dismissal, whichever occurs later, or of a letter issued under subsection  
20 (1), the complainant may petition the district court in the district in which the alleged violation occurred for  
21 appropriate relief. Except as provided in 49-2-510, if the claimant fails to petition the district court within  
22 90 days after receipt of the letter, notice, or order issued by the commission staff, the claim ~~shall be~~ is  
23 barred.

24          (6) If the district court finds, in an action under this section, that a person, institution, entity, or  
25 agency against whom or which a complaint was filed has engaged in the unlawful discriminatory practice  
26 alleged in the complaint, the court may provide the same relief as described in 49-2-506 for a commission  
27 order. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees.

28          (7) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged  
29 violation of this chapter, including acts that may otherwise also constitute a violation of the discrimination  
30 provisions of Article II, section 4, of the Montana constitution or 49-1-102. ~~No other~~ Another claim or

1 request for relief based upon ~~such~~ the acts may not be entertained by a district court other than by the  
2 procedures specified in this chapter."

3  
4 **Section 13.** Section 49-2-510, MCA, is amended to read:

5 **"49-2-510. Procedures and remedies for enforcement of housing discrimination laws.** (1) A  
6 complaint may be filed with the commission by ~~or on behalf of~~ a person claiming to be aggrieved by any  
7 discriminatory practice prohibited by 49-2-305. The complaint must be in written form and must be filed  
8 with the commission within ~~1-year~~ 90 days after the alleged unlawful discriminatory practice occurred or  
9 was discovered.

10 (2) ~~(a) Except as provided in subsection (2)(b), if~~ If the commission, in a hearing under 49-2-505,  
11 finds that a person, institution, entity, or agency against whom a complaint was filed under this part has  
12 engaged in a discriminatory practice in violation of 49-2-305, the commission may, in addition to the  
13 remedies and injunctive and other equitable relief provided by 49-2-506, ~~to vindicate the public interest,~~  
14 assess a civil penalty pursuant to the statutes governing the award of punitive damages in this state:

15 ~~(i)(a)~~ (i)(a) in an amount not exceeding \$10,000 if the respondent has not been ~~found~~ adjudged in any  
16 prior judicial or formal administrative proceeding to have committed any prior discriminatory housing  
17 practice in violation of 49-2-305; and

18 ~~(ii)(b)~~ (ii)(b) in an amount not exceeding \$25,000 if the respondent has been ~~found~~ adjudged in any prior  
19 judicial or formal administrative proceedings to have committed one ~~other~~ or more similar discriminatory  
20 housing ~~practice~~ practices in repeated violation of a subsection of 49-2-305 during the 5-year period ending  
21 on the date of the filing of the written complaint; ~~and.~~

22 ~~(iii) in an amount not exceeding \$50,000 if the respondent has been found to have committed two~~  
23 ~~or more discriminatory housing practices in violation of 49-2-305 during the 7-year period ending on the~~  
24 ~~date of the filing of the complaint.~~

25 ~~(b) If the acts constituting the discriminatory housing practice that is the object of the complaint~~  
26 ~~are committed by the same natural person who has been previously found to have committed acts~~  
27 ~~constituting a discriminatory housing practice, the civil penalties provided in subsections (2)(a)(ii) and~~  
28 ~~(2)(a)(iii) may be imposed without regard to the period of time within which any prior discriminatory housing~~  
29 ~~practice occurred.~~

30 (3) In the case of an order with respect to a discriminatory housing practice in violation of

1 49-2-305 that occurred in the course of a business subject to licensing or regulation by a governmental  
2 agency, the commission shall, no later than 30 days after the date of the issuance of the order or, if the  
3 order is judicially reviewed, no later than 30 days after the order is ~~in substance~~ affirmed;

4 ~~(a) send copies of the findings of fact, the conclusions of law, and the order to the licensing or~~  
5 ~~regulatory agency; and~~

6 ~~(b) recommend to the licensing or regulatory agency appropriate disciplinary action, including,~~  
7 ~~where appropriate, the suspension or revocation of the license of the respondent.~~

8 (4) (a) When a complaint is filed under 49-2-305, a complainant, or a respondent, ~~or aggrieved~~  
9 ~~person on whose behalf the complaint was filed~~ may elect to have the claims decided in a civil action in  
10 lieu of a hearing under 49-2-505. The election must be made no later than 20 days after receipt by the  
11 electing person of service of notice of certification for hearing under 49-2-505. The person making the  
12 election shall give notice to the commission and to all other complainants and respondents ~~to whom the~~  
13 ~~complaint relates~~ named in the complaint. Within 30 days after the election is made, the ~~commission~~  
14 complainant shall commence a civil action in an appropriate district court ~~on behalf of the aggrieved person~~  
15 ~~if the commission staff has made a finding that the allegations of the complaint are supported by substantial~~  
16 ~~evidence. If the commission staff has made a finding that the allegations of the complaint are not supported~~  
17 ~~by substantial evidence, the complainant may commence a civil action in an appropriate district court in~~  
18 ~~accordance with subsection (5). An aggrieved person with respect to the issues to be determined in a civil~~  
19 ~~action brought by the commission staff may intervene in the action.~~

20 (b) The commission may not continue administrative proceedings on a complaint after an election  
21 is made in accordance with subsection (4)(a).

22 (5) (a) An aggrieved person may commence a civil action in an appropriate district court within 2  
23 years after an alleged unlawful discriminatory practice under 49-2-305 occurred or was discovered or within  
24 2 years of the breach of a conciliation agreement entered into under 49-2-504 in a case alleging a violation  
25 of 49-2-305. The computation of the 2-year period does not include any time during which an  
26 administrative proceeding under this title was pending with respect to a complaint alleging a violation of  
27 49-2-305. The tolling of the time limit for commencing a civil action does not apply to actions arising from  
28 breach of a conciliation agreement.

29 (b) An aggrieved person may commence a civil action under this subsection for a violation of  
30 49-2-305 whether or not a complaint has been filed under 49-2-501 and without regard to the status of

1 a complaint filed with the commission except as provided in subsection (5)(d). If the commission has  
2 obtained a conciliation agreement with the consent of the aggrieved person, an action may not be filed  
3 under this subsection by the aggrieved person regarding the alleged violation of 49-2-305 that forms the  
4 basis for the complaint except for the purpose of enforcing the terms of the agreement.

5 (c) The commission may not continue administrative proceedings on a complaint after the beginning  
6 of a trial of a civil action commenced by the aggrieved party under this subsection (5) seeking relief with  
7 respect to the same alleged violation of 49-2-305.

8 (d) An aggrieved person may not commence a civil action under this subsection (5) with respect  
9 to an alleged violation of 49-2-305 if the commission has commenced a hearing on the record under  
10 49-2-505 regarding the same complaint.

11 (e) Upon application by a person alleging a violation of 49-2-305 in a civil action under this  
12 subsection (5) or by a person against whom the violation is alleged, the court may:

13 (i) appoint an attorney for the applicant and the respondent; or

14 (ii) authorize the commencement or continuation of a civil action without the payment of fees,  
15 costs, or security if, in the opinion of the court, the ~~applicant~~ party is financially unable to bear the costs  
16 of the civil action. As in all actions brought in forma pauperis, the burden of showing lack of financial ability  
17 rests with the party claiming financial hardship.

18 ~~(f) Upon timely application, the commission may intervene in a civil action brought under this~~  
19 ~~subsection (5) if the commission certifies that the case is of general public importance. Upon intervention,~~  
20 ~~the commission may obtain the same relief that would be available to the commission under subsection (7).~~

21 (6) If the court finds that a person, institution, entity, or agency against whom a complaint was  
22 filed under this section has been adjudicated in a civil or formal administrative proceeding to have engaged  
23 in a similar discriminatory practice in violation of a subsection of 49-2-305, the court may, ~~in addition to~~  
24 ~~the other remedies and injunctive and other equitable relief provided under 49-2-506~~ consistent with the  
25 provisions of subsection (2), award ~~punitive~~ additional damages. The court may also award attorney fees  
26 to the substantively prevailing party.

27 ~~(7) (a) Whenever the commission has reasonable cause to believe that a person or group of persons~~  
28 ~~is engaged in a pattern or practice in violation of 49-2-305 or that a group of persons has been~~  
29 ~~discriminated against in violation of 49-2-305 and the denial raises an issue of general public importance,~~  
30 ~~the commission may commence a civil action in an appropriate district court. The commission may also~~

1 ~~commence a civil action in any appropriate district court for relief regarding breach of a conciliation~~  
 2 ~~agreement in a case regarding an alleged violation of 49-2-305 if the commission is a party to the~~  
 3 ~~agreement.~~

4 ~~(b) The commission may file a civil action under this subsection (7) within 18 months after the~~  
 5 ~~alleged breach of the conciliation agreement or unlawful discriminatory practice occurred or was discovered.~~

6 ~~(c) In a civil action under this subsection (7), the court may, in addition to the remedies provided~~  
 7 ~~under 49-2-506, assess a civil penalty against the respondent:~~

8 ~~(i) in an amount not exceeding \$50,000 for a first violation; and~~

9 ~~(ii) in an amount not exceeding \$100,000 for any subsequent violation.~~

10 ~~(d) Upon timely application, a person may intervene in a civil action under this subsection (7) that~~  
 11 ~~involves an alleged violation of 49-2-305 with respect to which the intervenor is an aggrieved person.~~

12 ~~(8)(7) Civil All civil and administrative penalties and other revenue generated under this section~~  
 13 ~~must be paid to the state treasurer to be deposited in an account in the state special revenue fund to be~~  
 14 ~~used by the commission for housing discrimination enforcement part must be deposited into the state's~~  
 15 ~~general fund."~~

16

17 **Section 14.** Section 49-2-601, MCA, is amended to read:

18 **"49-2-601. Criminal penalty.** A (1) Except as provided in subsection (2), a person, who or an  
 19 educational institution, or financial institution, either public or private, or a governmental entity or agency  
 20 who or which that willfully engages in an unlawful discriminatory practice prohibited by this chapter or  
 21 willfully resists, prevents, impedes, or interferes with the commission, the department, or any of its  
 22 authorized representatives in the performance of a duty under this chapter or ~~who or which~~ willfully violates  
 23 an order of the commission or willfully violates this chapter in any other manner is guilty of a misdemeanor  
 24 and is punishable by a fine of not more than \$500 or by imprisonment for not more than 6 months, or both.

25 (2) A person may not be subject to any penalty under this section if the person acts in a manner  
 26 consistent with the protection of the person's rights to avoid criminal or civil self-incrimination."

27

28 **NEW SECTION. Section 15. Codification instruction.** [Section 1] is intended to be codified as an  
 29 integral part of Title 49, chapter 2, part 2, and the provisions of Title 49, chapter 2, part 2, apply to  
 30 [section 1].



STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0350, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill that generally revises Human Rights Act procedures, transfers supervision of commission staff to Department of Labor and Industry, provides that neither the Human Rights Commission nor the staff have independent enforcement authority for violations of the discrimination laws, and eliminates the ability of the commission to obtain temporary restraining orders, enforce commission orders, or present cases in support of the complaint. The bill requires the commission to conduct investigations and hearings pursuant to the Rules of Civil Procedure and Rules of Evidence, establishes a heightened standard to prove a violation of the housing discrimination advertising provisions of the act, requires the commission to give notice of receipt of a complaint within one working day, provides that the Administrative Procedure Act does not govern contested hearings under the act, that punitive damages are not available in housing discrimination cases tried in district court, and allows for transfer of a case filed with the commission to district court, requires judicial review of commission decisions to be de novo, and eliminates the ability of the commission to file a discrimination complaint on behalf of a complainant in district court. The bill provides for all penalties and other funds generated under the human rights laws to be deposited the state general fund and an immediate effective date.

ASSUMPTIONS:

1. Neither the Human Rights Commission nor the Department of Labor and Industry would be eligible to receive any federal funds to offset the cost of the program because the law would not conform to federal standards governing eligibility for these funds.
2. The Department of Labor and Industry would require the same level of funding requested in the Governor's Executive Budget for the Human Rights Commission to operate the program. The loss of federal funds would be offset by a like amount of general fund.

FISCAL IMPACT:

	<u>FY98</u>	<u>FY99</u>
<u>Revenues:</u>	<u>Difference</u>	<u>Difference</u>
Federal Special Revenue (03)	(326,768)	(325,282)
<u>Net Impact on Fund Balance:</u>		
General Fund (01)	(326,768)	(325,282)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

The proposed legislation would result in increased numbers of discrimination cases being heard in the district courts because some cases filed with the commission would be transferred to district court and cases decided by the commission would be reheard on appeal. The number of cases added to district court dockets is estimated to be 300 per year. The impact of this increase on district court expenditures is unknown.

(Continued)

Dave Lewis 2-18-97  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

WALTER MCNUTT, PRIMARY SPONSOR      DATE

Fiscal Note for SB0350, as introduced

**SB 350**



LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

1. The statement of intent included in the proposed legislation provides that the commission and staff cannot assist, directly or indirectly, complainants or respondents with procedural or substantive matters of discrimination. In addition to precluding the commission from being able to perform education on discrimination issues, this appears to prevent the commission from engaging in the type of intake screening it now performs. The commission presently screens out six of seven complaint inquiries it receives. Any reduction in commission caseload resulting from the transfer of cases to district court would be more than offset by the increase in complaint filings caused by the inability to screen complaints out at intake.
2. The inability to engage in federal work sharing would also mean that when complaints alleging a violation of both state and federal law are filed, the Montana Human Rights Commission and the Equal Employment Opportunity Commission or the Department of Housing and Urban Development would each be required to perform its own administrative processing of the complaint. Thus, the employer or housing provider would be subject to two investigations and hearing or litigation in every case. Housing providers and advertisers would continue to be subject to the requirements of federal law.
3. The Human Rights Commission would be required to conduct investigations following the Montana Rules of Civil Procedure and Montana Rules of Evidence. This would make the investigative process more cumbersome to the parties.

TECHNICAL NOTES:

1. SB 350 permits the commission to adopt rules under the Montana Rules of Criminal Procedure. It is unclear what is referred to here.
2. One working day is an unreasonably short time to send notice of complaints.
3. De novo review of administrative agency decisions renders the contested case process meaningless.
4. A bill requiring a reorganization is usually effective July 1 related to a fiscal year.
5. SB 350 amends Title 49, chapter 2 procedures but not Title 49, chapter 3 procedures. As a result, it would be unclear what procedures apply to complaints against government entities, which usually allege a violation of both chapters 2 and 3.

APPROVED BY COM ON LABOR & EMPLOYMENT RELATIONS

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*Senate* BILL NO. *353*

*Wills 1/10/01*  
*you*

INTRODUCED BY

*Walter Miller* *Steve Hilliard*

*David Keenan* *Chad Beckin* *Beaudry* *Thomas Wagner* *Beck*

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE COMMISSION FOR HUMAN RIGHTS; PROVIDING THAT THE COMMISSION MAY NOT HIRE ITS OWN STAFF; PROVIDING THAT THE STAFF OF THE COMMISSION IS NOT INDEPENDENT OF THE COMMISSION

OR OF LABOR; PROVIDING THAT COMMISSION STAFF MAY NOT FILE A COMPLAINT ON BEHALF OF ANOTHER PERSON; REQUIRING THE COMMISSION TO ADOPT THE MONTANA RULES OF CIVIL PROCEDURE, THE MONTANA RULES OF EVIDENCE, AND APPROPRIATE RULES OF THE MONTANA CODE OF CRIMINAL PROCEDURE AS PART OF ITS PROCEDURAL RULES; REQUIRING A PATTERN OR PRACTICE THAT SHOWS A CONSCIOUS AND INTENTIONAL DISREGARD FOR THE PROHIBITION AGAINST DISCRIMINATION IN HOUSING ADVERTISEMENTS BEFORE A VIOLATION OCCURS; PROVIDING THAT THE COMMISSION MAY NOT APPLY TO A DISTRICT COURT FOR A PRELIMINARY INJUNCTION AGAINST A RESPONDENT; REQUIRING COMMISSION STAFF TO INFORM A POTENTIAL RESPONDENT WITHIN 1 WORKING DAY AFTER RECEIPT OF A COMPLAINT; PREVENTING THE COMMISSION FROM REQUESTING A CHANGE OF VENUE IN A CONTESTED CASE HEARING; PROHIBITING COMMISSION STAFF FROM PETITIONING A DISTRICT COURT FOR ENFORCEMENT OF A COMMISSION ORDER; RESTRICTING THE

*Lee McCarty* *David Wagner* *HARP* *Stank* *Shea* *Stark* *Bishop*  
*DENNY* *Thomas* *Clark* *Linne* *Johnson* *SM* *Just* *Johnson*

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO INTRODUCED COPY (WHITE) FOR COMPLETE TEXT.**

Senate BILL NO. 350

*Wells 11/10/11*

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INTRODUCED BY

*Walter & Marjorie Sister Allard*

*David Keenan Cho Becker Beaudry Thomas Wagner*

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE COMMISSION FOR HUMAN RIGHTS; PROVIDING THAT THE COMMISSION MAY NOT HIRE ITS OWN STAFF; PROVIDING THAT THE STAFF OF THE COMMISSION IS NOT INDEPENDENT OF THE COMMISSION OR OF LABOR; PROVIDING THAT COMMISSION STAFF MAY NOT FILE A COMPLAINT ON BEHALF OF ANOTHER PERSON; REQUIRING THE COMMISSION TO ADOPT THE MONTANA RULES OF CIVIL PROCEDURE, THE MONTANA RULES OF EVIDENCE, AND APPROPRIATE RULES OF THE MONTANA CODE OF CRIMINAL PROCEDURE AS PART OF ITS PROCEDURAL RULES; REQUIRING A PATTERN OR PRACTICE THAT SHOWS A CONSCIOUS AND INTENTIONAL DISREGARD FOR THE PROHIBITION AGAINST DISCRIMINATION IN HOUSING ADVERTISEMENTS BEFORE A VIOLATION OCCURS; PROVIDING THAT THE COMMISSION MAY NOT APPLY TO A DISTRICT COURT FOR A PRELIMINARY INJUNCTION AGAINST A RESPONDENT; REQUIRING COMMISSION STAFF TO INFORM A POTENTIAL RESPONDENT WITHIN 1 WORKING DAY AFTER RECEIPT OF A COMPLAINT; PREVENTING THE COMMISSION FROM REQUESTING A CHANGE OF VENUE IN A CONTESTED CASE HEARING; PROHIBITING COMMISSION STAFF FROM PETITIONING A DISTRICT COURT FOR ENFORCEMENT OF A COMMISSION ORDER; RESTRICTING THE COMMISSION FROM DENYING REMOVAL OF A CASE TO DISTRICT COURT; ALLOWING A RESPONDENT

*See Mc Carthy, Denny, HARP, Stark, Shea, Fisher, Bishop*  
*DENNY Thomas Clark Prince*

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO INTRODUCED COPY (WHITE) FOR COMPLETE TEXT.**

## 1 SENATE BILL NO. 350

2 INTRODUCED BY MCNUTT, SLITER, HIBBARD, KRENZLER, WELLS, MCGEE, JORE, MOOD, KEENAN,  
3 OHS, DEVLIN, BEAUDRY, MESAROS, WAGNER, BECK, MCCARTHY, GRADY, SWYSGOOD, HARP,  
4 STANG, SHEA, FOSTER, BISHOP, DENNY, THOMAS, CLARK, GRINDE, ANDERSON, M. TAYLOR,  
5 REHBEIN, MAHLUM, KASTEN, MILLER

6  
7 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE  
8 COMMISSION FOR HUMAN RIGHTS; PROVIDING THAT THE COMMISSION MAY NOT HIRE ITS OWN  
9 STAFF; TRANSFERRING THE STAFF OF THE COMMISSION TO THE DEPARTMENT OF LABOR AND  
10 INDUSTRY; PROVIDING THAT THE STAFF OF THE COMMISSION IS NOT INDEPENDENT OF THE  
11 COMMISSION OR COMMISSIONER OF LABOR; PROVIDING THAT COMMISSION STAFF THE  
12 DEPARTMENT MAY NOT FILE A COMPLAINT ON BEHALF OF ANOTHER PERSON; REQUIRING THE  
13 COMMISSION TO ADOPT ADOPTION OF THE MONTANA RULES OF CIVIL PROCEDURE, THE MONTANA  
14 RULES OF EVIDENCE, AND APPROPRIATE RULES OF THE MONTANA CODE OF CRIMINAL PROCEDURE  
15 AS PART OF ITS PROCEDURAL RULES; REQUIRING A PATTERN OR PRACTICE THAT SHOWS A  
16 CONSCIOUS AND INTENTIONAL DISREGARD FOR THE PROHIBITION AGAINST DISCRIMINATION IN  
17 HOUSING ADVERTISEMENTS BEFORE A VIOLATION OCCURS; PROVIDING THAT THE COMMISSION  
18 COMMISSIONER MAY NOT APPLY TO A DISTRICT COURT FOR A PRELIMINARY INJUNCTION AGAINST  
19 A RESPONDENT; REQUIRING COMMISSION STAFF THE DEPARTMENT TO INFORM A POTENTIAL  
20 RESPONDENT WITHIN 1 WORKING DAY 10 BUSINESS DAYS AFTER RECEIPT OF A COMPLAINT;  
21 PREVENTING THE COMMISSION DEPARTMENT FROM REQUESTING A CHANGE OF VENUE IN A  
22 CONTESTED CASE HEARING; PROHIBITING COMMISSION STAFF THE DEPARTMENT FROM PETITIONING  
23 A DISTRICT COURT FOR ENFORCEMENT OF A COMMISSION ORDER; RESTRICTING THE COMMISSION  
24 DEPARTMENT FROM DENYING REMOVAL THE FILING OF A CASE TO IN DISTRICT COURT; ALLOWING  
25 A RESPONDENT TO REMOVE A CASE TO DISTRICT COURT; REQUIRING A CASE REMOVED TO DISTRICT  
26 COURT TO BE HEARD DE NOVO; REVISING PENALTY PROVISIONS; PROVIDING THAT A PERSON MAY  
27 AVOID SELF-INCRIMINATION IN DISCRIMINATION CASES; AMENDING SECTIONS 2-15-1706, 39-1-102,  
28 49-2-101, 49-2-203, 49-2-204, 49-2-305, 49-2-501, 49-2-503, 49-2-504, 49-2-505, 49-2-506, 49-2-508,  
29 49-2-509, AND 49-2-510, AND 49-2-601, MCA; REPEALING SECTIONS 49-2-201, 49-2-502, 49-3-304,  
30 49-3-305, 49-3-306, 49-3-307, 49-3-308, 49-3-309, 49-3-310, 49-3-311, AND 49-3-312, MCA; AND

1 PROVIDING AN ~~IMMEDIATE~~ EFFECTIVE DATE AND A ~~RETROACTIVE~~ AN APPLICABILITY DATE."

2  
3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

4  
5 NEW SECTION. Section 1. Purpose. It is the intent of the legislature that the commission sit in  
6 independent judgment of complaints of alleged discrimination in Montana and that the ~~commission~~ staff  
7 operate under the direction and control of the commissioner ~~of labor~~. The staff is not independent of the  
8 commissioner. It is the intent of the legislature that the commission and the ~~commission staff~~  
9 DEPARTMENT not favor ~~or assist~~, directly or indirectly, complainants or respondents with procedural or  
10 substantive matters of discrimination in Montana. The commission AND THE DEPARTMENT shall maintain  
11 the highest standards of objectivity and impartiality when judging cases asserting alleged discrimination in  
12 Montana. IT IS NOT THE INTENT OF THE LEGISLATURE THAT THE DEPARTMENT BE PROHIBITED FROM  
13 DISMISSING MATTERS, FROM REFERRING MATTERS TO OTHER AGENCIES FOLLOWING AN INITIAL  
14 INQUIRY AND INTERVIEW, OR FROM REACHING A DECISION IN AN INVESTIGATION OR CONTESTED  
15 CASE HEARING.

16  
17 **Section 2.** Section 2-15-1706, MCA, is amended to read:

18 **"2-15-1706. Commission for human rights -- allocation -- quasi-judicial.** (1) There is a commission  
19 for human rights.

20 (2) The commission consists of five members appointed by the governor with the consent of the  
21 senate.

22 (3) The commission is designated as a quasi-judicial board for the purposes of 2-15-124 and its  
23 members ~~shall~~ must be compensated and receive travel expenses as provided for in 2-15-124.

24 (4) The commission is allocated to the department of labor and industry for administrative purposes  
25 only as provided in 2-15-121, ~~except that the commission may hire its own personnel, may seek and~~  
26 ~~receive private and federal funds in its own name, and may determine all matters of policy concerning the~~  
27 ~~use of its budget. Subsection (2)(d) of 2-15-121 shall not apply for purposes of this section."~~

28  
29 **SECTION 3. SECTION 39-1-102, MCA, IS AMENDED TO READ:**

30 **"39-1-102. Duties of department.** The department shall enforce all the laws of Montana relating

1 to hours of labor, conditions of labor, prosecution of employers who default in payment of wages,  
 2 protection of employees, and all laws relating to child labor ~~which~~ that regulate the employment of children  
 3 in any manner and shall administer the laws of the state relating to free employment offices and all other  
 4 state labor laws. The department shall investigate and enforce the laws prohibiting discrimination contained  
 5 in Title 49, chapters 2 and 3, and provide a means for conciliation between parties."

6

7 **SECTION 4. SECTION 49-2-101, MCA, IS AMENDED TO READ:**

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

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

13 (2) "Aggrieved party" means a person who can demonstrate a specific personal and legal interest,  
 14 as distinguished from a general interest, and who has been or is likely to be specially and injuriously  
 15 affected by a violation of this chapter.

16 ~~(2)(3)~~ "Commission" means the commission for human rights provided for in 2-15-1706.

17 (4) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

18 ~~(3)(5)~~ "Credit" means the right granted by a creditor to a person to defer payment of a debt, to  
 19 incur debt and defer its payment, or to purchase property or services and defer payment. It includes without  
 20 limitation the right to incur and defer debt that is secured by residential real property.

21 ~~(4)(6)~~ "Credit transaction" means any invitation to apply for credit, application for credit, extension  
 22 of credit, or credit sale.

23 ~~(5)(7)~~ "Creditor" means a person who, regularly or as a part of the person's business, arranges for  
 24 the extension of credit for which the payment of a financial charge or interest is required, whether in  
 25 connection with loans, sale of property or services, or otherwise.

26 (8) "Department" means the department of labor and industry provided for in 2-15-1701.

27 ~~(6)(9)~~ "Educational institution" means a public or private institution and includes an academy;  
 28 college; elementary or secondary school; extension course; kindergarten; nursery; school system;  
 29 university; business, nursing, professional, secretarial, technical, or vocational school; or agent of an  
 30 educational institution.

1       ~~(7)~~(10) "Employee" means an individual employed by an employer.

2       ~~(8)~~(11) "Employer" means an employer of one or more persons or an agent of the employer but  
3 does not include a fraternal, charitable, or religious association or corporation if the association or  
4 corporation is not organized either for private profit or to provide accommodations or services that are  
5 available on a nonmembership basis.

6       ~~(9)~~(12) "Employment agency" means a person undertaking to procure employees or opportunities  
7 to work.

8       ~~(10)~~(13) "Financial institution" means a commercial bank, trust company, savings bank, finance  
9 company, savings and loan association, credit union, investment company, or insurance company.

10       ~~(11)~~(14) "Housing accommodation" means a building or portion of a building, whether constructed  
11 or to be constructed, that is or will be used as the sleeping quarters of its occupants.

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

15       ~~(13)~~(16) "National origin" means ancestry.

16       (17) (a) "Organization" means a corporation, association, or any other legal or commercial entity  
17 that engages in advocacy of, enforcement of, or compliance with legal interests affected by this chapter.

18       (b) The term does not include a labor organization.

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

22       ~~(15)~~(19) (a) "Physical or mental disability" means:

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

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

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

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

1           ~~(16)~~(20) (a) "Public accommodation" means a place that caters or offers its services, goods, or  
 2 facilities to the general public, subject only to the conditions and limitations established by law and  
 3 applicable to all persons. It includes without limitation a public inn, restaurant, eating house, hotel,  
 4 roadhouse, place where food or alcoholic beverages or malt liquors are sold for consumption, motel, soda  
 5 fountain, soft drink parlor, tavern, nightclub, trailer park, resort, campground, barbershop, beauty parlor,  
 6 bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor,  
 7 transportation company, or hospital and all other public amusement and business establishments.

8           (b) Public accommodation does not include an institution, club, or place of accommodation that  
 9 proves that it is by its nature distinctly private. An institution, club, or place of accommodation may not  
 10 be considered by its nature distinctly private if it has more than 100 members, provides regular meal  
 11 service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or  
 12 beverages, directly or indirectly, from or on behalf of nonmembers, for the furtherance of trade or business.  
 13 For the purposes of this subsection ~~(16)~~ (20), any lodge of a recognized national fraternal organization is  
 14 considered by its nature distinctly private.

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

16  
 17           **Section 5.** Section 49-2-203, MCA, is amended to read:

18           **"49-2-203. Subpoena power.** (1) The commission may subpoena witnesses, take the testimony  
 19 of any person under oath, administer oaths, and, in connection therewith, require the production for  
 20 examination of books, papers, or other tangible evidence relating to a matter ~~either under investigation by~~  
 21 ~~the commission staff or~~ in question before the commission. ~~The commission may delegate the foregoing~~  
 22 ~~powers to a person within the staff for the purpose of investigating a complaint.~~

23           (2) THE DEPARTMENT'S STAFF MAY REQUEST THAT A SUBPOENA RELATING TO A MATTER  
 24 UNDER INVESTIGATION BE ISSUED BY THE COMMISSIONER OR THE COMMISSIONER'S AUTHORIZED  
 25 REPRESENTATIVE. THE AUTHORIZED REPRESENTATIVE MAY NOT BE INVOLVED IN ENFORCEMENT OF  
 26 HUMAN RIGHTS. THE COMMISSIONER MAY SUBPOENA WITNESSES, TAKE TESTIMONY UNDER OATH,  
 27 ADMINISTER OATHS, AND REQUIRE THE PRODUCTION, FOR EXAMINATION, OF BOOKS, PAPERS, OR  
 28 OTHER INTANGIBLE EVIDENCE.

29           (3) A PARTY MAY REQUEST SUBPOENAS FROM THE COMMISSIONER FOR THE PURPOSES  
 30 PROVIDED IN SUBSECTION (2).



1           ~~(2)(4)~~ Subpoenas issued pursuant to this section may be enforced as provided in 2-4-104 of the  
2 Montana Administrative Procedure Act."

3

4           **Section 6.** Section 49-2-204, MCA, is amended to read:

5           "**49-2-204. ~~Commission to adopt rules~~ RULES.** (1) The commission shall adopt procedural and  
6 substantive rules necessary to implement THE COMMISSION'S RESPONSIBILITIES UNDER this chapter.  
7 Rulemaking procedures ~~shall~~ must comply with the requirements of the Montana Administrative Procedure  
8 Act. At a minimum, the commission shall adopt as part of its procedural rules ALL APPLICABLE PORTIONS  
9 OF the Montana Rules of Civil Procedure and the Montana Rules of Evidence. The commission may adopt  
10 a portion of the Montana Code of Criminal Procedure, THE PROCEDURAL PROVISIONS OF TITLE 46 as it  
11 considers appropriate.

12           (2) THE DEPARTMENT SHALL ADOPT PROCEDURAL AND SUBSTANTIVE RULES NECESSARY TO  
13 IMPLEMENT THE DEPARTMENT'S RESPONSIBILITIES UNDER THIS CHAPTER. RULES ADOPTED UNDER  
14 THIS CHAPTER MUST COMPLY WITH THE MONTANA ADMINISTRATIVE PROCEDURE ACT. FOR  
15 CONTESTED CASE HEARINGS CONDUCTED PURSUANT TO 49-2-505, THE DEPARTMENT SHALL ADOPT  
16 ALL APPLICABLE PORTIONS OF THE MONTANA RULES OF CIVIL PROCEDURE AND THE MONTANA  
17 RULES OF EVIDENCE."

18

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

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

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

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

29           ~~(c) to make an inquiry of the sex, marital status, race, creed, religion, age, familial status, physical~~  
30 ~~or mental disability, color, or national origin of a person seeking to buy, lease, or rent a housing~~

1 ~~accommodation or property for the purpose of discriminating on the basis of sex, marital status, race,~~  
2 ~~creed, religion, age, familial status, physical or mental disability, color, or national origin;~~

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

6 ~~(e) to represent to a person that a housing accommodation or property is not available for~~  
7 ~~inspection, sale, or rental because of that person's sex, marital status, race, creed, religion, age, familial~~  
8 ~~status, physical or mental disability, color, or national origin when the housing accommodation or property~~  
9 ~~is in fact available; or~~

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

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

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

21 ~~(b) If the printing or publication of the notice, statement, or advertisement was by a person~~  
22 ~~regularly engaged in the business of publishing classified housing notices, statements, or advertisements,~~  
23 ~~subsection (3)(a) is not violated unless it is shown that the printing or publication of the notice, statement,~~  
24 ~~or advertisement is part of a pattern or practice of printing or publishing notices, statements, or~~  
25 ~~advertisements in violation of subsection (3)(a) that demonstrates a conscious and intentional disregard for~~  
26 ~~the provisions of subsections (1) and (3)(a).~~

27 ~~(4) It is an unlawful discriminatory practice for a person to discriminate because of a physical or~~  
28 ~~mental disability of a buyer, lessee, or renter; a person residing in or intending to reside in or on the housing~~  
29 ~~accommodation or property after it is sold, leased, rented, or made available; or any person associated with~~  
30 ~~that buyer, lessee, or renter.~~

- 1           ~~(a) in the sale, rental, or availability of the housing accommodation or property;~~
- 2           ~~(b) in the terms, conditions, or privileges of a sale or rental of the housing accommodation or~~  
 3 ~~property; or~~
- 4           ~~(c) in the provision of services or facilities in connection with the housing accommodation or~~  
 5 ~~property.~~
- 6           ~~(5) For purposes of subsections (1) and (4), discrimination because of physical or mental disability~~  
 7 ~~includes:~~
- 8           ~~(a) refusal to permit, at the expense of the person with a disability, reasonable modifications of~~  
 9 ~~existing premises occupied or to be occupied by the person with a disability if the modifications may be~~  
 10 ~~necessary to allow the person full enjoyment of the premises, except that in the case of a lease or rental,~~  
 11 ~~the landlord may, where when it is reasonable to do so, condition permission for a modification on the~~  
 12 ~~lessor's or renter's agreement to restore the interior of the premises to the condition that existed before~~  
 13 ~~the modification, except for reasonable wear and tear;~~
- 14           ~~(b) refusal to make reasonable accommodations in rules, policies, practices, or services when the~~  
 15 ~~accommodations may be necessary to allow the person equal opportunity to use and enjoy a housing~~  
 16 ~~accommodation or property; or~~
- 17           ~~(c) (i) except as provided in subsection (5)(c)(ii), in connection with the design and construction~~  
 18 ~~of a covered multifamily housing accommodation, a failure to design and construct the housing~~  
 19 ~~accommodation in a manner that:~~
- 20           ~~(A) provides at least one accessible building entrance on an accessible route;~~
- 21           ~~(B) makes the public use and common use portions of the housing accommodation readily~~  
 22 ~~accessible to and usable by a person with a disability;~~
- 23           ~~(C) provides that all doors designed to allow passage into and within all premises within the~~  
 24 ~~housing accommodation are sufficiently wide to allow passage by a person with a disability who uses a~~  
 25 ~~wheelchair; and~~
- 26           ~~(D) ensures that all premises within the housing accommodation contain the following features of~~  
 27 ~~adaptive design:~~
- 28           ~~(i) an accessible route into and through the housing accommodation;~~
- 29           ~~(ii) light switches, electrical outlets, thermostats, and other environmental controls in accessible~~  
 30 ~~locations;~~

- 1           ~~(III) reinforcements in bathroom walls to allow later installation of grab bars; and~~
- 2           ~~(IV) usable kitchens and bathrooms that allow an individual who uses a wheelchair to maneuver~~
- 3 ~~about the space;~~
- 4           ~~(iii) a covered multifamily housing accommodation that does not have at least one building entrance~~
- 5 ~~on an accessible route because it is impractical to do so due to because of the terrain or unusual~~
- 6 ~~characteristics of the site is not required to comply with the requirements of subsection (5)(c)(i).~~
- 7           ~~(6) For purposes of subsection (5), the term "covered multifamily housing accommodation" means:~~
- 8           ~~(a) a building consisting of four or more dwelling units if the building has one or more elevators;~~
- 9 ~~and~~
- 10           ~~(b) ground floor units in a building consisting of four or more dwelling units.~~
- 11           ~~(7) (a) It is an unlawful discriminatory practice for any person or other entity whose business~~
- 12 ~~includes engaging in residential real estate related transactions to discriminate because of sex, marital~~
- 13 ~~status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin~~
- 14 ~~against a person in making available a transaction or in the terms or conditions of a transaction.~~
- 15           ~~(b) For purposes of this subsection (7), the term "residential real estate related transaction" means~~
- 16 ~~any of the following:~~
- 17           ~~(i) the making or purchasing of loans or providing other financial assistance:~~
- 18           ~~(A) for purchasing, constructing, improving, repairing, or maintaining a housing accommodation~~
- 19 ~~or property; or~~
- 20           ~~(B) secured by residential real estate; or~~
- 21           ~~(ii) the selling, brokering, or appraising of residential real property.~~
- 22           ~~(8) It is an unlawful discriminatory practice to:~~
- 23           ~~(a) deny a person access to or membership or participation in:~~
- 24           ~~(i) a multiple listing service;~~
- 25           ~~(ii) a real estate brokers' organization; or~~
- 26           ~~(iii) any other service, organization, or facility relating to the business of selling, leasing, or renting~~
- 27 ~~housing accommodations or property; or to~~
- 28           ~~(b) discriminate against the person referred to in subsection (8)(a) in the terms or conditions of~~
- 29 ~~access, membership, or participation because of sex, marital status, race, creed, religion, age, familial~~
- 30 ~~status, physical or mental disability, color, or national origin.~~

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

5           (10) The prohibitions of this section against discrimination because of age and familial status do not  
 6 extend to housing for older persons. "Housing for older persons" means housing:

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

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

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

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

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

20  
 21           **Section 7.** Section 49-2-501, MCA, is amended to read:

22           "**49-2-501. Filing complaints.** (1) A complaint may be filed WITH THE DEPARTMENT by ~~or on~~  
 23 ~~behalf of any person~~ PARTY claiming to be aggrieved by any discriminatory practice prohibited by this  
 24 chapter.

25           (2) A COMPLAINT MAY BE FILED ON BEHALF OF A PARTY CLAIMING TO BE AGGRIEVED BY A  
 26 DISCRIMINATORY PRACTICE PROHIBITED BY THIS CHAPTER IF THE PERSON ACTING ON BEHALF OF  
 27 THE AGGRIEVED PARTY IS THE AGGRIEVED PARTY'S GUARDIAN, ATTORNEY, OR DULY AUTHORIZED  
 28 REPRESENTATIVE OR AN ADVOCACY GROUP, LABOR ORGANIZATION, OR OTHER ORGANIZATION  
 29 ACTING AS AN AUTHORIZED REPRESENTATIVE.

30           (3) The complaint must be in the form of a written, verified complaint stating the name and address

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

5 ~~(2)(4)~~ (a) Except as provided in 49-2-510 and subsection ~~(2)(b)~~ (4)(B) of this section, a complaint  
 6 under this chapter must be filed with the ~~commission~~ DEPARTMENT within 180 days after the alleged  
 7 unlawful discriminatory practice occurred or was discovered.

8 (b) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing  
 9 a grievance in accordance with any grievance procedure established by a collective bargaining agreement,  
 10 contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the  
 11 grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful  
 12 discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within  
 13 120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice  
 14 occurred or was discovered.

15 (c) Any complaint not filed within the times set forth ~~herein~~ in this section may not be considered  
 16 by the commission OR THE DEPARTMENT."

17  
 18 **Section 8.** Section 49-2-503, MCA, is amended to read:

19 **"49-2-503. Temporary relief by court order.** At any time after a complaint is filed under this  
 20 chapter, a district court may, upon the application of THE COMMISSIONER OR ~~the commission or the~~  
 21 complainant, enter a preliminary injunction against a respondent in the case. The procedure for granting the  
 22 order is as provided by statute for preliminary injunctions in civil actions."

23  
 24 **Section 9.** Section 49-2-504, MCA, is amended to read:

25 **"49-2-504. Informal ~~settlement~~ INVESTIGATION AND CONCILIATION. (1) (A)** The ~~commission~~  
 26 ~~staff~~ DEPARTMENT shall informally investigate the matters set out in ~~a filed~~ THE complaint promptly and  
 27 impartially. If the ~~staff~~ DEPARTMENT determines that the allegations are supported by ~~substantial a~~  
 28 preponderance of the evidence, it shall ~~immediately try to~~ ATTEMPT TO ACHIEVE A RESOLUTION OF THE  
 29 COMPLAINT BY CONFERENCE, CONCILIATION, AND PERSUASION THAT, IN ADDITION TO PROVIDING  
 30 REDRESS FOR THE COMPLAINT, INCLUDES CONDITIONS THAT eliminate the discriminatory practice ~~by~~

1 ~~conference, conciliation, and persuasion, IF ANY, IDENTIFIED IN THE INVESTIGATION. The staff~~  
2 ~~DEPARTMENT shall, upon the first working day~~ WITHIN 10 BUSINESS DAYS following receipt of a filed  
3 ~~complaint, notify a potential~~ respondent that the respondent is the subject of a filed complaint. The  
4 ~~notification must be in writing and must include a copy of the filed complaint, together with all documents~~  
5 ~~submitted to the commission or its staff with the complaint.~~ IF REQUESTED, THE DEPARTMENT SHALL  
6 ALSO PROVIDE THE PARTIES WITH ALL OTHER INFORMATION RELATED TO THE COMPLAINT IN THE  
7 POSSESSION OF THE DEPARTMENT THAT IS NOT CURRENTLY IN THE POSSESSION OF THE PARTIES  
8 OR A PARTY. THE DEPARTMENT SHALL MAKE KNOWN TO THE PARTIES THE FACT THAT  
9 INFORMATION IS AVAILABLE UPON REQUEST. THE DEPARTMENT MAY NOT INVESTIGATE A  
10 COMPLAINT UNTIL IT HAS RECEIVED NOTICE THAT THE RESPONDENT HAS RECEIVED THE  
11 DEPARTMENT'S NOTIFICATION OF THE COMPLAINT.

12 (B) IF A COMPLAINT IS FILED RELATIVE TO AN EMPLOYMENT-RELATED COMPLAINT AND IF THE  
13 COMMISSIONER DECIDES THAT THE INCLUSION OF DOCUMENTS OR INFORMATION CONTAINED IN THE  
14 COMPLAINT WOULD SERIOUSLY IMPEDE THE RIGHTS OF A PERSON OR THE PROPER INVESTIGATION  
15 OF THE COMPLAINT, THE INFORMATION MAY BE EXCLUDED FROM THE NOTIFICATION BY PROVIDING  
16 A WRITTEN SUMMARY OF THE INFORMATION CONTAINED IN THE COMPLAINT. THE WRITTEN  
17 SUMMARY MUST INCLUDE SUFFICIENT INFORMATION TO GIVE MAXIMUM EFFECT TO THE INTENT OF  
18 THIS CHAPTER.

19 (2) THE RESPONDENT SHALL FILE AN ANSWER TO A COMPLAINT FILED WITH THE DEPARTMENT  
20 WITHIN 10 BUSINESS DAYS OF THE RESPONDENT'S RECEIPT OF THE COMPLAINT. AN ANSWER MAY  
21 BE A RESPONSE SIMPLY ADMITTING OR DENYING THE ALLEGATIONS WITHOUT FURTHER SPECIFICITY  
22 OR REQUESTING ADDITIONAL INFORMATION FROM THE DEPARTMENT. THE TIME FOR FILING AN  
23 ANSWER MAY BE EXTENDED BY A SHOWING OF GOOD CAUSE.

24 (3) THE DEPARTMENT SHALL COMMENCE PROCEEDINGS WITHIN 30 DAYS AFTER RECEIPT OF  
25 A COMPLAINT.

26 (4) THE DEPARTMENT SHALL MAKE A FINDING REGARDING THE MERIT OR NONMERIT OF THE  
27 COMPLAINT WITHIN 180 DAYS AFTER A COMPLAINT IS FILED, EXCEPT THAT THE DEPARTMENT SHALL  
28 MAKE THE FINDING WITHIN 120 DAYS AFTER A COMPLAINT IS FILED UNDER 49-2-305."

29  
30 **Section 10.** Section 49-2-505, MCA, is amended to read:

1           "49-2-505. Contested case hearing. (1) If the informal efforts to eliminate the alleged  
2 discrimination are unsuccessful, the staff DEPARTMENT shall ~~inform the commission of the failure and the~~  
3 ~~commission shall cause written notice to be served, together with a copy of the complaint, requiring the~~  
4 ~~person, educational institution, financial institution, or governmental entity or agency charged in the~~  
5 ~~complaint to answer the allegations of the complaint at a hearing before the commission~~ HOLD A HEARING  
6 ON THE COMPLAINT. THE DEPARTMENT SHALL SERVE NOTICE OF THE HEARING AND A COPY OF THE  
7 COMPLAINT ON THE PARTIES.

8           (2) (A) IF THE PARTIES MUTUALLY AGREE TO PERMIT THE DEPARTMENT TO RETAIN  
9 JURISDICTION OF THE CASE UNDER THIS CHAPTER FOR A PERIOD OF TIME THAT EXCEEDS 12  
10 MONTHS AFTER THE COMPLAINT WAS FILED, THEN THE PARTIES SHALL STIPULATE TO A SCHEDULE  
11 FOR PROCEEDINGS TO BE ESTABLISHED BY THE DEPARTMENT.

12           (B) THE DEPARTMENT SHALL, NOT LATER THAN 395 DAYS AFTER THE COMPLAINT WAS  
13 FILED, SET A DATE FOR AN ADMINISTRATIVE HEARING IN THE CASE.

14           (C) THE CASE MUST BE HEARD NO LATER THAN 90 DAYS AFTER THE DATE IS SET BY THE  
15 DEPARTMENT. THE DEPARTMENT MAY, IN ITS SOLE DISCRETION, ISSUE A CONTINUANCE OF THE  
16 HEARING DATE ONLY UPON A SHOWING OF GOOD CAUSE.

17           ~~(2)(3)~~ (A) The hearing must be held by the ~~commission~~ DEPARTMENT in the county where the  
18 unlawful conduct is alleged to have occurred unless ~~the person, institution, entity, or agency~~ A PARTY  
19 charged in the complaint ~~or the commission~~ requests AND IS GRANTED a change of venue for good cause  
20 shown. The case in support of the complaint may be presented before the ~~commission~~ DEPARTMENT by  
21 ~~the staff,~~ the complainant, or an attorney representing the complainant. The hearing and any subsequent  
22 proceedings under this chapter must be held in accordance with the APPLICABLE PORTIONS OF THE  
23 ~~Montana Administrative Procedure Act except as provided in 49-2-508~~ Rules of Civil Procedure AS  
24 ADOPTED BY THE DEPARTMENT.

25           (B) UPON REQUEST OF THE HEARINGS OFFICER, THE DEPARTMENT MAY PRESENT EVIDENCE  
26 WITH REGARD TO ACTIVITY CONDUCTED. HOWEVER, EXCEPT IN CASES BROUGHT PURSUANT TO 42  
27 U.S.C. 3601, ET SEQ., THE DEPARTMENT MAY NOT REPRESENT EITHER PARTY IN A CONTESTED CASE  
28 HEARING.

29           (3) A PARTY MAY APPEAL A DECISION OF THE HEARINGS OFFICER TO THE COMMISSION. A  
30 PARTY SHALL PROVIDE NOTICE OF ITS APPEAL TO THE COMMISSION, THE DEPARTMENT, AND ALL



1 PARTIES WITHIN 10 BUSINESS DAYS OF RECEIPT OF THE NOTICE OF DECISION OF THE  
 2 ADMINISTRATIVE HEARING. THE COMMISSION SHALL HEAR ALL APPEALS WITHIN 120 DAYS OF  
 3 RECEIPT OF NOTICE OF APPEAL. THE COMMISSION SHALL RENDER A DECISION WITHIN 90 DAYS OF  
 4 HEARING THE APPEAL.

5 (4) ALL HEARINGS CONDUCTED UNDER THIS SECTION MAY, UPON STIPULATION OF THE  
 6 PARTIES, BE HEARD TELEPHONICALLY.

7 ~~(3)~~(5) The commission may make provisions for defraying the expenses of an indigent party in a  
 8 contested case hearing held pursuant to this chapter.

9 ~~(4)~~(6) The prevailing party in a hearing under this section may bring an action in district court for  
 10 ~~attorneys' attorney~~ fees. The court in its discretion may allow the prevailing party reasonable ~~attorneys'~~  
 11 attorney fees. An action under this section must comply with the Montana Rules of Civil Procedure."  
 12

13 **Section 11.** Section 49-2-506, MCA, is amended to read:

14 **"49-2-506. Procedure upon a finding of discrimination.** (1) If the commission OR THE  
 15 DEPARTMENT, AFTER A HEARING, finds that a ~~person, institution, entity, or agency~~ PARTY against whom  
 16 a complaint was filed has engaged in the discriminatory practice alleged in the complaint, the commission  
 17 OR THE DEPARTMENT shall order ~~him the person or it the institution, entity, or agency~~ PARTY to refrain  
 18 from engaging in the discriminatory conduct. The order may:

19 (a) prescribe conditions on the accused's future conduct relevant to the type of discriminatory  
 20 practice found;

21 (b) require any reasonable measure to correct the discriminatory practice and to rectify any harm,  
 22 pecuniary or otherwise, to the person discriminated against;

23 (c) require a report on the manner of compliance.

24 (2) ~~Except as provided in 49-2-510, the~~ EXCEPT AS PROVIDED IN 49-2-510, THE order may  
 25 not require the payment of ~~any~~ punitive damages.

26 (3) Whenever a commission OR DEPARTMENT order or conciliation agreement requires inspection  
 27 by the ~~commission staff~~ DEPARTMENT for a period of time to determine if the respondent is complying with  
 28 that order or agreement, the period of time may not be more than ~~3 years~~ 1 year."  
 29

30 **Section 12.** Section 49-2-508, MCA, is amended to read:

1           **"49-2-508. Enforcement of commission OR DEPARTMENT order OR CONCILIATION AGREEMENT.**  
 2 If the ~~commission's~~ order ISSUED UNDER 49-2-506 is not obeyed, ~~the commission staff or~~ THE  
 3 COMMISSIONER OR a party may petition the district court in the county where the discriminatory practice  
 4 occurred or in which the respondent resides or transacts business to enforce the commission's OR  
 5 DEPARTMENT'S order by any appropriate order. THE COMMISSIONER OR A PARTY MAY ALSO  
 6 COMMENCE A CIVIL ACTION IN AN APPROPRIATE DISTRICT COURT FOR RELIEF FOR A BREACH OF A  
 7 CONCILIATION AGREEMENT."

8

9           **Section 13.** Section 49-2-509, MCA, is amended to read:

10           **"49-2-509. ~~Filing a Removal~~ CONCLUSION of complaint in to -- FILING IN district court.** (1) Except  
 11 as provided in subsection (2) ~~or with respect to complaints alleging a violation of 49-2-305~~, the ~~commission~~  
 12 ~~staff~~ DEPARTMENT shall, at the request of either party, ~~issue a letter entitling the complainant or the~~  
 13 ~~respondent to file remove a discrimination action in to district court~~ CONCLUDE THE ADMINISTRATIVE  
 14 PROCEEDINGS if:

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

16           (A) THE DEPARTMENT HAS COMPLETED ITS INVESTIGATION IN A COMPLAINT FILED PURSUANT  
 17 TO 49-2-305; OR

18           (B) 12 MONTHS HAVE ELAPSED SINCE THE COMPLAINT WAS FILED; and

19           ~~(b) 12 months have elapsed since the complaint was filed.~~

20           (2) The ~~commission~~ DEPARTMENT staff may not refuse to ~~permit removal of a case to district court~~  
 21 CONCLUDE THE ADMINISTRATIVE PROCEEDINGS ~~if~~ unless:

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

24           ~~(b)(a)~~ the party requesting ~~removal~~ THE CONCLUSION OF THE ADMINISTRATIVE PROCEEDINGS  
 25 has waived the right to request ~~removal to~~ FILING IN the district court;

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

29           ~~(d)(c)~~ the party requesting ~~removal~~ CONCLUSION OF THE ADMINISTRATIVE PROCEEDINGS has  
 30 unsuccessfully attempted through court litigation to prevent the ~~commission staff~~ DEPARTMENT from

1 investigating the complaint.

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

4 (a) the commission OR THE DEPARTMENT ~~staff determines that the commission~~ lacks jurisdiction  
5 over the complaint;

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

8 (c) the ~~commission~~ DEPARTMENT ~~staff~~ determines that the allegations of the complaint are not  
9 supported by ~~substantial~~ A PREPONDERANCE OF THE evidence; OR

10 (D) THE DEPARTMENT DETERMINES THAT THE COMMISSION OR THE DEPARTMENT WILL NOT  
11 OR CANNOT HOLD A HEARING WITHIN 12 MONTHS AFTER THE FILING OF THE COMPLAINT.

12 (4) A decision of the ~~commission~~ DEPARTMENT ~~staff~~ to dismiss a complaint brought under this  
13 chapter or to refuse to permit removal to the district court is final unless a party seeks review by filing  
14 objections within 14 days after the decision is served on ~~him~~ the party. The commission shall review the  
15 decision in informal proceedings under 2-4-604, ~~except that 2-4-604(5) applies only to review of a refusal~~  
16 ~~to permit removal.~~ A party may ask the district court to review a decision of the commission made under  
17 this part SECTION. The review must be de novo.

18 (5) Within 90 days after receipt of a notice of ~~dismissal~~ under subsection (1) OR (3) or an order  
19 under subsection (4) of affirmance of a dismissal, whichever occurs later, or of a letter issued under  
20 subsection (1), the complainant may ~~petition~~ COMMENCE A CIVIL ACTION IN the district court in the  
21 district in which the alleged violation occurred for appropriate relief. Except as provided in 49-2-510, if the  
22 ~~claimant~~ COMPLAINANT fails to ~~petition~~ COMMENCE A CIVIL ACTION IN the district court within 90 days  
23 after receipt of the letter, notice, or order issued by the commission ~~staff~~ OR THE DEPARTMENT, the claim  
24 ~~shall be is~~ barred.

25 (6) If the district court finds, in an action under this section, that a person, institution, entity, or  
26 agency against whom or which a complaint was filed has engaged in the unlawful discriminatory practice  
27 alleged in the complaint, the court may provide the same relief as described in 49-2-506 for a commission  
28 order. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees.

29 (7) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged  
30 violation of CHAPTER 3 OR this chapter, including acts that may otherwise also constitute a violation of

1 the discrimination provisions of Article II, section 4, of the Montana constitution or 49-1-102. ~~No other~~  
 2 ~~Another~~ A claim or request for relief based upon ~~such~~ the acts may not be entertained by a district court  
 3 other than by the procedures specified in this chapter."  
 4

5 **Section 14.** Section 49-2-510, MCA, is amended to read:

6 **"49-2-510. Procedures and remedies for enforcement of housing discrimination laws.** (1) A  
 7 complaint may be filed with the ~~commission~~ DEPARTMENT by ~~or on behalf of~~ OR ON BEHALF OF a ~~person~~  
 8 PARTY claiming to be aggrieved by any discriminatory practice prohibited by 49-2-305. The complaint must  
 9 be in written form, VERIFIED BY THE AGGRIEVED PARTY, and must be filed with the ~~commission~~  
 10 DEPARTMENT within ~~1 year~~ 90 180 days after the alleged unlawful discriminatory practice occurred or was  
 11 discovered.

12 (2) ~~(a) Except as provided in subsection (2)(b), if~~ If the DEPARTMENT, ON APPEAL, OR THE  
 13 ~~commission,~~ in a hearing under 49-2-505, finds that a ~~person, institution, entity, or agency~~ PARTY against  
 14 whom a complaint was filed under this part has engaged in a discriminatory practice in violation of  
 15 49-2-305, the DEPARTMENT OR THE ~~commission~~ may, in addition to the remedies and injunctive and other  
 16 equitable relief provided by 49-2-506, ~~to vindicate the public interest,~~ TO VINDICATE THE PUBLIC  
 17 INTEREST, assess a civil penalty ~~pursuant to the statutes governing the award of punitive damages in this~~  
 18 state:

19 ~~(i)(a)~~ (a) in an amount not exceeding \$10,000 if the respondent has not been ~~found~~ adjudged in any  
 20 prior judicial or formal administrative proceeding to have committed any prior discriminatory housing  
 21 practice in violation of 49-2-305; and

22 ~~(ii)(b)~~ (b) in an amount not exceeding \$25,000 if the respondent has been ~~found~~ adjudged in any prior  
 23 judicial or formal administrative proceedings to have committed one ~~other~~ or more similar discriminatory  
 24 housing ~~practice~~ practices in repeated violation of a subsection of 49-2-305 during the 5-year period ending  
 25 on the date of the filing of the written complaint; and

26 ~~(iii)~~ (c) in an amount not exceeding \$50,000 if the respondent has been ~~found~~ adjudged to have committed two  
 27 or more discriminatory housing practices in violation of 49-2-305 during the 7 year period ending on the  
 28 date of the filing of the complaint.

29 ~~(b) If the acts constituting the discriminatory housing practice that is the object of the complaint~~  
 30 ~~are committed by the same natural person who has been previously found to have committed acts~~

1 ~~constituting a discriminatory housing practice, the civil penalties provided in subsections (2)(a)(ii) and~~  
 2 ~~(2)(a)(iii) may be imposed without regard to the period of time within which any prior discriminatory housing~~  
 3 ~~practice occurred.~~

4 (3) In the case of an order with respect to a discriminatory housing practice in violation of  
 5 49-2-305 that occurred in the course of a business subject to licensing or regulation by a governmental  
 6 agency, the commission shall, no later than 30 days after the date of the issuance of the order or, if the  
 7 order is judicially reviewed, no later than 30 days after the order is ~~in substance~~ affirmed:

8 ~~(a) send copies of the findings of fact, the conclusions of law, and the order to the licensing or~~  
 9 ~~regulatory agency; and~~

10 ~~(b) recommend to the licensing or regulatory agency appropriate disciplinary action, including,~~  
 11 ~~where appropriate, the suspension or revocation of the license of the respondent.~~

12 (4) (a) When a complaint is filed under 49-2-305, a complainant, or a respondent, or aggrieved  
 13 ~~person on whose behalf the complaint was filed~~ may elect to have the claims decided in a civil action in  
 14 lieu of a hearing under 49-2-505. The election must be made no later than 20 days after receipt by the  
 15 electing person of service of notice of certification for hearing under 49-2-505. The person making the  
 16 election shall give notice to the ~~commission~~ DEPARTMENT and to all ~~other~~ complainants and OTHER  
 17 ~~respondents to whom the complaint relates~~ named in the complaint. Within 30 days after the election is  
 18 made, the ~~commission~~ complainant, THE COMMISSIONER, OR THE AGGRIEVED PARTY shall MAY  
 19 commence a civil action in an appropriate district court ~~on behalf of the aggrieved person if the commission~~  
 20 ~~staff has made a finding that the allegations of the complaint are supported by substantial evidence. If the~~  
 21 ~~commission staff has made a finding that the allegations of the complaint are not supported by substantial~~  
 22 ~~evidence, the complainant may commence a civil action in an appropriate district court in accordance with~~  
 23 ~~subsection (5). An aggrieved person with respect to the issues to be determined in a civil action brought~~  
 24 ~~by the commission staff may intervene in the action~~ ON BEHALF OF THE AGGRIEVED PARTY IF THE  
 25 DEPARTMENT HAS MADE A FINDING THAT THE ALLEGATIONS OF THE COMPLAINT ARE SUPPORTED  
 26 BY A PREPONDERANCE OF THE EVIDENCE. IF THE DEPARTMENT HAS MADE A FINDING THAT THE  
 27 ALLEGATIONS OF THE COMPLAINT ARE NOT SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE,  
 28 THE COMPLAINANT MAY COMMENCE A CIVIL ACTION IN AN APPROPRIATE DISTRICT COURT IN  
 29 ACCORDANCE WITH SUBSECTION (5). AN AGGRIEVED PARTY WITH RESPECT TO THE ISSUES TO BE  
 30 DETERMINED IN A CIVIL ACTION BROUGHT BY THE DEPARTMENT MAY INTERVENE IN THE ACTION.

1 (b) The ~~commission~~ DEPARTMENT may not continue administrative proceedings on a complaint  
2 after an election is made in accordance with subsection (4)(a).

3 (5) (a) An aggrieved ~~person~~ PARTY may commence a civil action in an appropriate district court  
4 within 2 years after an alleged unlawful discriminatory practice under 49-2-305 occurred or was discovered  
5 or within 2 years of the breach of a conciliation agreement entered into under 49-2-504 in a case alleging  
6 a violation of 49-2-305. The computation of the 2-year period does not include any time during which an  
7 administrative proceeding under this title was pending with respect to a complaint alleging a violation of  
8 49-2-305. The tolling of the time limit for commencing a civil action does not apply to actions arising from  
9 breach of a conciliation agreement.

10 (b) An aggrieved ~~person~~ PARTY may commence a civil action under this subsection for a violation  
11 of 49-2-305 whether or not a complaint has been filed under 49-2-501 and without regard to the status  
12 of a complaint filed with the ~~commission~~ DEPARTMENT except as provided in subsection (5)(d). If the  
13 ~~commission~~ DEPARTMENT has obtained a conciliation agreement with the consent of the aggrieved ~~person~~  
14 PARTY, an action may not be filed under this subsection by the aggrieved ~~person~~ PARTY regarding the  
15 alleged violation of 49-2-305 that forms the basis for the complaint except for the purpose of enforcing the  
16 terms of the agreement.

17 (c) The commission OR THE DEPARTMENT may not continue administrative proceedings on a  
18 complaint after the ~~beginning of a trial~~ FILING of a civil action commenced by the aggrieved party under  
19 this subsection (5) seeking relief with respect to the same alleged violation of 49-2-305.

20 (d) An aggrieved ~~person~~ PARTY may not commence a civil action under this subsection (5) with  
21 respect to an alleged violation of 49-2-305 if the commission OR THE DEPARTMENT has commenced a  
22 hearing on the record under 49-2-505 regarding the same complaint.

23 (e) Upon application by a person alleging a violation of 49-2-305 in a civil action under this  
24 subsection (5) or by a person against whom the violation is alleged, the court may:

- 25 (i) appoint an attorney for the applicant and the respondent; or
- 26 (ii) authorize the commencement or continuation of a civil action without the payment of fees,  
27 costs, or security if, in the opinion of the court, the ~~applicant party~~ party is financially unable to bear the costs  
28 of the civil action. As in all actions brought in forma pauperis, the burden of showing lack of financial ability  
29 rests with the party claiming financial hardship.

30 ~~(f) Upon timely application, the commission may intervene in a civil action brought under this~~

1 subsection (6) if the commission certifies that the case is of general public importance. Upon intervention,  
2 the commission may obtain the same relief that would be available to the commission under subsection (7).

3 (6) If the court finds that a person, institution, entity, or agency PARTY against whom a complaint  
4 was filed under this section has been adjudicated in a civil or formal administrative proceeding to have  
5 engaged in a similar discriminatory practice in violation of a subsection of 49-2-305, the court may, ~~in~~  
6 ~~addition to the other remedies and injunctive and other equitable relief provided under 49-2-506~~ consistent  
7 with the provisions of subsection (2), award ~~punitive~~ additional PUNITIVE damages. The court may also  
8 award attorney fees to the substantively prevailing party.

9 ~~(7) (a) Whenever the commission has reasonable cause to believe that a person or group of persons~~  
10 ~~is engaged in a pattern or practice in violation of 49-2-305 or that a group of persons has been~~  
11 ~~discriminated against in violation of 49-2-305 and the denial raises an issue of general public importance,~~  
12 ~~the commission may commence a civil action in an appropriate district court. The commission may also~~  
13 ~~commence a civil action in any appropriate district court for relief regarding breach of a conciliation~~  
14 ~~agreement in a case regarding an alleged violation of 49-2-305 if the commission is a party to the~~  
15 ~~agreement.~~

16 ~~(b) The commission may file a civil action under this subsection (7) within 18 months after the~~  
17 ~~alleged breach of the conciliation agreement or unlawful discriminatory practice occurred or was discovered.~~

18 ~~(c) In a civil action under this subsection (7), the court may, in addition to the remedies provided~~  
19 ~~under 49-2-506, assess a civil penalty against the respondent:~~

20 ~~(i) in an amount not exceeding \$50,000 for a first violation; and~~

21 ~~(ii) in an amount not exceeding \$100,000 for any subsequent violation.~~

22 ~~(d) Upon timely application, a person may intervene in a civil action under this subsection (7) that~~  
23 ~~involves an alleged violation of 49-2-305 with respect to which the intervenor is an aggrieved person.~~

24 ~~(8)(7) (A) Civil All EXCEPT AS PROVIDED IN SUBSECTION (7)(B), ALL civil and administrative~~  
25 ~~penalties and other revenue generated under this section must be paid to the state treasurer to be deposited~~  
26 ~~in an account in the state special revenue fund to be used by the commission for housing discrimination~~  
27 ~~enforcement part must be deposited into the state's general fund.~~

28 (B) DAMAGES OR PENALTIES, WHETHER MONETARY OR OTHERWISE, MAY NOT INURE TO AN  
29 ORGANIZATION UNLESS THE ORGANIZATION IS AN AGGRIEVED PARTY. THIS SECTION DOES NOT  
30 AFFECT ANY AMOUNT OWED TO AN AGGRIEVED PARTY."

1 ~~Section 14. Section 49-2-601, MCA, is amended to read:~~

2 ~~"49-2-601. Criminal penalty. A (1) Except as provided in subsection (2), a person, who or an~~  
 3 ~~educational institution, or financial institution, either public or private, or a governmental entity or agency~~  
 4 ~~who or which that willfully engages in an unlawful discriminatory practice prohibited by this chapter or~~  
 5 ~~willfully resists, prevents, impedes, or interferes with the commission, the department, or any of its~~  
 6 ~~authorized representatives in the performance of a duty under this chapter or who or which willfully violates~~  
 7 ~~an order of the commission or willfully violates this chapter in any other manner is guilty of a misdemeanor~~  
 8 ~~and is punishable by a fine of not more than \$500 or by imprisonment for not more than 6 months, or both.~~

9 ~~(2) A person may not be subject to any penalty under this section if the person acts in a manner~~  
 10 ~~consistent with the protection of the person's rights to avoid criminal or civil self-incrimination."~~

11

12 NEW SECTION. SECTION 15. ENFORCEMENT. (1) WHEN A POSSIBLE VIOLATION OF THIS  
 13 CHAPTER COMES TO THE ATTENTION OF THE DEPARTMENT, THE COMMISSIONER MAY INITIATE A  
 14 COMPLAINT ON BEHALF OF THE DEPARTMENT. THE COMPLAINT MUST BE SIGNED BY THE  
 15 COMMISSIONER.

16 (2) A PERSON IS NOT SUBJECT TO PENALTIES UNDER THIS CHAPTER IF COMPLIANCE WITH  
 17 THE PROVISIONS OF THIS CHAPTER WOULD CAUSE THE PERSON TO VIOLATE THE PROVISIONS OF  
 18 ANOTHER STATE LAW.

19

20 NEW SECTION. SECTION 16. ENFORCEMENT AND REMEDIES. THE PROCEDURES SET FORTH  
 21 IN CHAPTER 2, PART 5, APPLY TO COMPLAINTS ALLEGING A VIOLATION OF THIS CHAPTER.

22

23 NEW SECTION. SECTION 17. STAFF TRANSFER. THE STAFF OF THE COMMISSION IS  
 24 TRANSFERRED TO THE DEPARTMENT. THE STAFF IS UNDER THE DIRECTION AND CONTROL OF THE  
 25 COMMISSIONER OF LABOR AND INDUSTRY. THE STAFF SHALL PERFORM FUNCTIONS AS DIRECTED  
 26 AND IN ACCORDANCE WITH THE EXPRESS AND IMPLIED PURPOSES OF [THIS ACT]. THE TRANSFER  
 27 OF STAFF IS SUBJECT TO 2-15-131 THROUGH 2-15-137.

28

29 NEW SECTION. SECTION 18. REPEALER. SECTIONS 49-2-201, 49-2-502, 49-3-304, 49-3-305,  
 30 49-3-306, 49-3-307, 49-3-308, 49-3-309, 49-3-310, 49-3-311, AND 49-3-312, MCA, ARE REPEALED.





STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0350, second reading - second house

DESCRIPTION OF PROPOSED LEGISLATION:

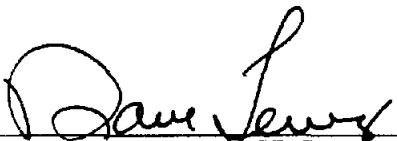
An act generally revising the laws relating to the Commission for Human Rights; providing that the commission may not hire its own staff; transferring the staff of the commission to the Department of Labor and Industry; providing that the staff of the commission is not independent of the Commissioner of Labor; providing that the department may not file a complaint on behalf of another person; requiring the adoption of the Montana Rules of Civil Procedure, the Montana Rules of Evidence, and appropriate rules of the Montana Code of Criminal Procedure as part of procedural rules; requiring a pattern or practice that shows a conscious and intentional disregard for the prohibition against discrimination in housing advertisements before a violation occurs; providing that the Commissioner may apply to a District Court for a preliminary injunction against a respondent; requiring the department to inform a potential respondent within 10 business days after receipt of a complaint; preventing the department from requesting a change of venue in a contested case hearing; prohibiting the department from petitioning a District Court for enforcement of a commission order; restricting the department from denying the filing of a case in District Court; allowing a respondent to remove a case to District Court; revising penalty provisions; providing that a person may avoid self-incrimination in discrimination cases.

ASSUMPTIONS:

1. The Department of Labor and Industry would be eligible to receive federal funds, under SB 350 as it is currently amended.
2. Therefore, there is no fiscal impact to the Department of Labor and Industry.

FISCAL IMPACT:

There would be no fiscal impact to the Department of Labor and Industry.

 4-7-97  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

 4/7/97  
WALTER MCNUTT, PRIMARY SPONSOR      DATE

Fiscal Note for SB0350, second reading

SB 350 \*2

## 1 SENATE BILL NO. 350

2 INTRODUCED BY MCNUTT, SLITER, HIBBARD, KRENZLER, WELLS, MCGEE, JORE, MOOD, KEENAN,  
 3 OHS; DEVLIN, BEAUDRY, MESAROS, WAGNER, BECK, MCCARTHY, GRADY, SWYSGOOD, HARP,  
 4 STANG, SHEA, FOSTER, BISHOP, DENNY, THOMAS, CLARK, GRINDE, ANDERSON, M. TAYLOR,  
 5 REHBEIN, MAHLUM, KASTEN, MILLER

6  
 7 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE  
 8 COMMISSION FOR HUMAN RIGHTS; PROVIDING THAT THE COMMISSION MAY NOT HIRE ITS OWN  
 9 STAFF; TRANSFERRING THE STAFF OF THE COMMISSION TO THE DEPARTMENT OF LABOR AND  
 10 INDUSTRY; PROVIDING THAT THE STAFF OF THE COMMISSION IS NOT INDEPENDENT OF THE  
 11 ~~COMMISSION OR COMMISSIONER~~ OF LABOR; PROVIDING THAT ~~COMMISSION STAFF~~ THE  
 12 DEPARTMENT MAY NOT FILE A COMPLAINT ON BEHALF OF ANOTHER PERSON; REQUIRING THE  
 13 ~~COMMISSION TO ADOPT~~ ADOPTION OF THE MONTANA RULES OF CIVIL PROCEDURE, THE MONTANA  
 14 RULES OF EVIDENCE, AND APPROPRIATE RULES OF THE MONTANA CODE OF CRIMINAL PROCEDURE  
 15 AS PART OF ~~ITS~~ PROCEDURAL RULES; REQUIRING A PATTERN OR PRACTICE THAT SHOWS A  
 16 CONSCIOUS AND INTENTIONAL DISREGARD FOR THE PROHIBITION AGAINST DISCRIMINATION IN  
 17 HOUSING ADVERTISEMENTS BEFORE A VIOLATION OCCURS; PROVIDING THAT THE ~~COMMISSION~~  
 18 COMMISSIONER MAY ~~NOT~~ APPLY TO A DISTRICT COURT FOR A PRELIMINARY INJUNCTION AGAINST  
 19 A RESPONDENT; REQUIRING ~~COMMISSION STAFF~~ THE DEPARTMENT TO INFORM A POTENTIAL  
 20 RESPONDENT WITHIN ~~4 WORKING DAY~~ 10 BUSINESS DAYS AFTER RECEIPT OF A COMPLAINT;  
 21 PREVENTING THE ~~COMMISSION~~ DEPARTMENT FROM REQUESTING A CHANGE OF VENUE IN A  
 22 CONTESTED CASE HEARING; PROHIBITING ~~COMMISSION STAFF~~ THE DEPARTMENT FROM PETITIONING  
 23 A DISTRICT COURT FOR ENFORCEMENT OF A COMMISSION ORDER; RESTRICTING THE ~~COMMISSION~~  
 24 DEPARTMENT FROM DENYING ~~REMOVAL~~ THE FILING OF A CASE ~~TO~~ IN DISTRICT COURT; ALLOWING  
 25 A RESPONDENT TO REMOVE A CASE TO DISTRICT COURT; ~~REQUIRING A CASE REMOVED TO DISTRICT~~  
 26 ~~COURT TO BE HEARD DE NOVO~~; REVISING PENALTY PROVISIONS; PROVIDING THAT A PERSON MAY  
 27 AVOID SELF-INCRIMINATION IN DISCRIMINATION CASES; AMENDING SECTIONS 2-15-1706, 39-1-102,  
 28 49-2-101, 49-2-203, 49-2-204, ~~49-2-306,~~ 49-2-501, 49-2-503, 49-2-504, 49-2-505, 49-2-506, 49-2-508,  
 29 49-2-509, AND 49-2-510, AND 49-2-601, MCA; REPEALING SECTIONS 49-2-201, 49-2-502, 49-3-304,  
 30 49-3-305, 49-3-306, 49-3-307, 49-3-308, 49-3-309, 49-3-310, 49-3-311, AND 49-3-312, MCA; AND

1 PROVIDING AN ~~IMMEDIATE~~ EFFECTIVE DATE AND A ~~RETROACTIVE~~ AN APPLICABILITY DATE."

2

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

4

5 NEW SECTION. Section 1. Purpose. It is the intent of the legislature that the commission sit in  
6 independent judgment of complaints of alleged discrimination in Montana and that the ~~commission~~ staff  
7 operate under the direction and control of the commissioner ~~of labor~~. The staff is not independent of the  
8 commissioner. It is the intent of the legislature that the commission and the ~~commission staff~~  
9 DEPARTMENT not favor ~~or assist~~, directly or indirectly, complainants or respondents with procedural or  
10 substantive matters of discrimination in Montana. The commission AND THE DEPARTMENT shall maintain  
11 the highest standards of objectivity and impartiality when judging cases asserting alleged discrimination in  
12 Montana. IT IS NOT THE INTENT OF THE LEGISLATURE THAT THE DEPARTMENT BE PROHIBITED FROM  
13 DISMISSING MATTERS, FROM REFERRING MATTERS TO OTHER AGENCIES FOLLOWING AN INITIAL  
14 INQUIRY AND INTERVIEW, OR FROM REACHING A DECISION IN AN INVESTIGATION OR CONTESTED  
15 CASE HEARING.

16

17 **Section 2.** Section 2-15-1706, MCA, is amended to read:

18 **"2-15-1706. Commission for human rights -- allocation -- quasi-judicial.** (1) There is a commission  
19 for human rights.

20 (2) The commission consists of five members appointed by the governor with the consent of the  
21 senate.

22 (3) The commission is designated as a quasi-judicial board for the purposes of 2-15-124 and its  
23 members ~~shall~~ must be compensated and receive travel expenses as provided for in 2-15-124.

24 (4) The commission is allocated to the department of labor and industry for administrative purposes  
25 only as provided in 2-15-121, ~~except that the commission may hire its own personnel, may seek and~~  
26 ~~receive private and federal funds in its own name, and may determine all matters of policy concerning the~~  
27 ~~use of its budget. Subsection (2)(d) of 2-15-121 shall not apply for purposes of this section."~~

28

29 **SECTION 3. SECTION 39-1-102, MCA, IS AMENDED TO READ:**

30 **"39-1-102. Duties of department.** The department shall enforce all the laws of Montana relating

1 to hours of labor, conditions of labor, prosecution of employers who default in payment of wages,  
 2 protection of employees, and all laws relating to child labor ~~which~~ that regulate the employment of children  
 3 in any manner and shall administer the laws of the state relating to free employment offices and all other  
 4 state labor laws. The department shall investigate and enforce the laws prohibiting discrimination contained  
 5 in Title 49, chapters 2 and 3, and provide a means for conciliation between parties."

6  
 7 **SECTION 4. SECTION 49-2-101, MCA, IS AMENDED TO READ:**

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

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

13 (2) "Aggrieved party" means a person who can demonstrate a specific personal and legal interest,  
 14 as distinguished from a general interest, and who has been or is likely to be specially and injuriously  
 15 affected by a violation of this chapter.

16 ~~(2)(3)~~ "Commission" means the commission for human rights provided for in 2-15-1706.

17 (4) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

18 ~~(3)(5)~~ "Credit" means the right granted by a creditor to a person to defer payment of a debt, to  
 19 incur debt and defer its payment, or to purchase property or services and defer payment. It includes without  
 20 limitation the right to incur and defer debt that is secured by residential real property.

21 ~~(4)(6)~~ "Credit transaction" means any invitation to apply for credit, application for credit, extension  
 22 of credit, or credit sale.

23 ~~(5)(7)~~ "Creditor" means a person who, regularly or as a part of the person's business, arranges for  
 24 the extension of credit for which the payment of a financial charge or interest is required, whether in  
 25 connection with loans, sale of property or services, or otherwise.

26 (8) "Department" means the department of labor and industry provided for in 2-15-1701.

27 ~~(6)(9)~~ "Educational institution" means a public or private institution and includes an academy;  
 28 college; elementary or secondary school; extension course; kindergarten; nursery; school system;  
 29 university; business, nursing, professional, secretarial, technical, or vocational school; or agent of an  
 30 educational institution.

1           ~~(7)~~(10) "Employee" means an individual employed by an employer.

2           ~~(8)~~(11) "Employer" means an employer of one or more persons or an agent of the employer but  
3 does not include a fraternal, charitable, or religious association or corporation if the association or  
4 corporation is not organized either for private profit or to provide accommodations or services that are  
5 available on a nonmembership basis.

6           ~~(9)~~(12) "Employment agency" means a person undertaking to procure employees or opportunities  
7 to work.

8           ~~(10)~~(13) "Financial institution" means a commercial bank, trust company, savings bank, finance  
9 company, savings and loan association, credit union, investment company, or insurance company.

10          ~~(11)~~(14) "Housing accommodation" means a building or portion of a building, whether constructed  
11 or to be constructed, that is or will be used as the sleeping quarters of its occupants.

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

15          ~~(13)~~(16) "National origin" means ancestry.

16          (17) (a) "Organization" means a corporation, association, or any other legal or commercial entity  
17 that engages in advocacy of, enforcement of, or compliance with legal interests affected by this chapter.

18          (b) The term does not include a labor organization.

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

22          ~~(15)~~(19) (a) "Physical or mental disability" means:

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

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

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

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

1           ~~(16)~~(20) (a) "Public accommodation" means a place that caters or offers its services, goods, or  
 2 facilities to the general public subject only to the conditions and limitations established by law and  
 3 applicable to all persons. It includes without limitation a public inn, restaurant, eating house, hotel,  
 4 roadhouse, place where food or alcoholic beverages or malt liquors are sold for consumption, motel, soda  
 5 fountain, soft drink parlor, tavern, nightclub, trailer park, resort, campground, barbershop, beauty parlor,  
 6 bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor,  
 7 transportation company, or hospital and all other public amusement and business establishments.

8           (b) Public accommodation does not include an institution, club, or place of accommodation that  
 9 proves that it is by its nature distinctly private. An institution, club, or place of accommodation may not  
 10 be considered by its nature distinctly private if it has more than 100 members, provides regular meal  
 11 service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or  
 12 beverages, directly or indirectly, from or on behalf of nonmembers, for the furtherance of trade or business.  
 13 For the purposes of this subsection ~~(16)~~ (20), any lodge of a recognized national fraternal organization is  
 14 considered by its nature distinctly private.

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

16  
 17           **Section 5.** Section 49-2-203, MCA, is amended to read:

18           "**49-2-203. Subpoena power.** (1) The commission may subpoena witnesses, take the testimony  
 19 of any person under oath, administer oaths, and, in connection therewith, require the production for  
 20 examination of books, papers, or other tangible evidence relating to a matter ~~either under investigation by~~  
 21 ~~the commission staff or~~ in question before the commission. ~~The commission may delegate the foregoing~~  
 22 ~~powers to a person within the staff for the purpose of investigating a complaint.~~

23           (2) THE DEPARTMENT'S STAFF MAY REQUEST THAT A SUBPOENA RELATING TO A MATTER  
 24 UNDER INVESTIGATION BE ISSUED BY THE COMMISSIONER OR THE COMMISSIONER'S AUTHORIZED  
 25 REPRESENTATIVE. THE AUTHORIZED REPRESENTATIVE MAY NOT BE INVOLVED IN ENFORCEMENT OF  
 26 HUMAN RIGHTS. THE COMMISSIONER MAY SUBPOENA WITNESSES, TAKE TESTIMONY UNDER OATH,  
 27 ADMINISTER OATHS, AND REQUIRE THE PRODUCTION, FOR EXAMINATION, OF BOOKS, PAPERS, OR  
 28 OTHER INTANGIBLE EVIDENCE.

29           (3) A PARTY MAY REQUEST SUBPOENAS FROM THE COMMISSIONER FOR THE PURPOSES  
 30 PROVIDED IN SUBSECTION (2).

1           ~~(2)(4)~~ Subpoenas issued pursuant to this section may be enforced as provided in 2-4-104 of the  
2 Montana Administrative Procedure Act."

3

4           **Section 6.** Section 49-2-204, MCA, is amended to read:

5           "**49-2-204. ~~Commission to adopt rules~~ RULES.** (1) The commission shall adopt procedural and  
6 substantive rules necessary to implement THE COMMISSION'S RESPONSIBILITIES UNDER this chapter.  
7 Rulemaking procedures ~~shall~~ must comply with the requirements of the Montana Administrative Procedure  
8 Act. At a minimum, the commission shall adopt as part of its procedural rules ALL APPLICABLE PORTIONS  
9 OF the Montana Rules of Civil Procedure and the Montana Rules of Evidence. The commission may adopt  
10 a portion of the Montana Code of Criminal Procedure, THE PROCEDURAL PROVISIONS OF TITLE 46 as it  
11 considers appropriate.

12           (2) THE DEPARTMENT SHALL ADOPT PROCEDURAL AND SUBSTANTIVE RULES NECESSARY TO  
13 IMPLEMENT THE DEPARTMENT'S RESPONSIBILITIES UNDER THIS CHAPTER. RULES ADOPTED UNDER  
14 THIS CHAPTER MUST COMPLY WITH THE MONTANA ADMINISTRATIVE PROCEDURE ACT. FOR  
15 CONTESTED CASE HEARINGS CONDUCTED PURSUANT TO 49-2-505, THE DEPARTMENT SHALL ADOPT  
16 ALL APPLICABLE PORTIONS OF THE MONTANA RULES OF CIVIL PROCEDURE AND THE MONTANA  
17 RULES OF EVIDENCE."

18

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

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

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

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

29           ~~(c) to make an inquiry of the sex, marital status, race, creed, religion, age, familial status, physical~~  
30 ~~or mental disability, color, or national origin of a person seeking to buy, lease, or rent a housing~~



1 ~~accommodation or property for the purpose of discriminating on the basis of sex, marital status, race,~~  
2 ~~creed, religion, age, familial status, physical or mental disability, color, or national origin;~~

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

6 ~~(e) to represent to a person that a housing accommodation or property is not available for~~  
7 ~~inspection, sale, or rental because of that person's sex, marital status, race, creed, religion, age, familial~~  
8 ~~status, physical or mental disability, color, or national origin when the housing accommodation or property~~  
9 ~~is in fact available; or~~

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

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

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

21 ~~(b) If the printing or publication of the notice, statement, or advertisement was by a person~~  
22 ~~regularly engaged in the business of publishing classified housing notices, statements, or advertisements,~~  
23 ~~subsection (3)(a) is not violated unless it is shown that the printing or publication of the notice, statement,~~  
24 ~~or advertisement is part of a pattern or practice of printing or publishing notices, statements, or~~  
25 ~~advertisements in violation of subsection (3)(a) that demonstrates a conscious and intentional disregard for~~  
26 ~~the provisions of subsections (1) and (3)(a).~~

27 ~~(4) It is an unlawful discriminatory practice for a person to discriminate because of a physical or~~  
28 ~~mental disability of a buyer, lessee, or renter; a person residing in or intending to reside in or on the housing~~  
29 ~~accommodation or property after it is sold, leased, rented, or made available; or any person associated with~~  
30 ~~that buyer, lessee, or renter;~~

- 1           ~~(a) in the sale, rental, or availability of the housing accommodation or property;~~
- 2           ~~(b) in the terms, conditions, or privileges of a sale or rental of the housing accommodation or~~  
 3 ~~property; or~~
- 4           ~~(c) in the provision of services or facilities in connection with the housing accommodation or~~  
 5 ~~property.~~
- 6           ~~(5) For purposes of subsections (1) and (4), discrimination because of physical or mental disability~~  
 7 ~~includes:~~
- 8           ~~(a) refusal to permit, at the expense of the person with a disability, reasonable modifications of~~  
 9 ~~existing premises occupied or to be occupied by the person with a disability if the modifications may be~~  
 10 ~~necessary to allow the person full enjoyment of the premises, except that in the case of a lease or rental,~~  
 11 ~~the landlord may, where when it is reasonable to do so, condition permission for a modification on the~~  
 12 ~~lessor's or renter's agreement to restore the interior of the premises to the condition that existed before~~  
 13 ~~the modification, except for reasonable wear and tear;~~
- 14           ~~(b) refusal to make reasonable accommodations in rules, policies, practices, or services when the~~  
 15 ~~accommodations may be necessary to allow the person equal opportunity to use and enjoy a housing~~  
 16 ~~accommodation or property; or~~
- 17           ~~(c) (i) except as provided in subsection (5)(c)(ii), in connection with the design and construction~~  
 18 ~~of a covered multifamily housing accommodation, a failure to design and construct the housing~~  
 19 ~~accommodation in a manner that:~~
- 20           ~~(A) provides at least one accessible building entrance on an accessible route;~~
- 21           ~~(B) makes the public use and common use portions of the housing accommodation readily~~  
 22 ~~accessible to and usable by a person with a disability;~~
- 23           ~~(C) provides that all doors designed to allow passage into and within all premises within the~~  
 24 ~~housing accommodation are sufficiently wide to allow passage by a person with a disability who uses a~~  
 25 ~~wheelchair; and~~
- 26           ~~(D) ensures that all premises within the housing accommodation contain the following features of~~  
 27 ~~adaptive design:~~
- 28           ~~(i) an accessible route into and through the housing accommodation;~~
- 29           ~~(ii) light switches, electrical outlets, thermostats, and other environmental controls in accessible~~  
 30 ~~locations;~~

- 1           ~~(III) reinforcements in bathroom walls to allow later installation of grab bars; and~~
- 2           ~~(IV) usable kitchens and bathrooms that allow an individual who uses a wheelchair to maneuver~~
- 3 ~~about the space;~~
- 4           ~~(iii) a covered multifamily housing accommodation that does not have at least one building entrance~~
- 5 ~~on an accessible route because it is impractical to do so due to because of the terrain or unusual~~
- 6 ~~characteristics of the site is not required to comply with the requirements of subsection (5)(c)(i).~~
- 7           ~~(6) For purposes of subsection (5), the term "covered multifamily housing accommodation" means:~~
- 8           ~~(a) a building consisting of four or more dwelling units if the building has one or more elevators;~~
- 9 ~~and~~
- 10           ~~(b) ground floor units in a building consisting of four or more dwelling units.~~
- 11           ~~(7) (a) It is an unlawful discriminatory practice for any person or other entity whose business~~
- 12 ~~includes engaging in residential real estate related transactions to discriminate because of sex, marital~~
- 13 ~~status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin~~
- 14 ~~against a person in making available a transaction or in the terms or conditions of a transaction.~~
- 15           ~~(b) For purposes of this subsection (7), the term "residential real estate related transaction" means~~
- 16 ~~any of the following:~~
- 17           ~~(i) the making or purchasing of loans or providing other financial assistance;~~
- 18           ~~(A) for purchasing, constructing, improving, repairing, or maintaining a housing accommodation~~
- 19 ~~or property; or~~
- 20           ~~(B) secured by residential real estate; or~~
- 21           ~~(ii) the selling, brokering, or appraising of residential real property.~~
- 22           ~~(8) It is an unlawful discriminatory practice to:~~
- 23           ~~(a) deny a person access to or membership or participation in;~~
- 24           ~~(i) a multiple listing service;~~
- 25           ~~(ii) a real estate brokers' organization; or~~
- 26           ~~(iii) any other service, organization, or facility relating to the business of selling, leasing, or renting~~
- 27 ~~housing accommodations or property; or to~~
- 28           ~~(b) discriminate against the person referred to in subsection (8)(a) in the terms or conditions of~~
- 29 ~~access, membership, or participation because of sex, marital status, race, creed, religion, age, familial~~
- 30 ~~status, physical or mental disability, color, or national origin.~~

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

5           ~~(10) The prohibitions of this section against discrimination because of age and familial status do not~~  
 6 ~~extend to housing for older persons. "Housing for older persons" means housing:~~

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

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

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

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

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

20  
 21           **Section 7. Section 49-2-501, MCA, is amended to read:**

22           **"49-2-501. Filing complaints. (1) A complaint may be filed WITH THE DEPARTMENT by ~~or on~~**  
 23 **~~behalf of any person~~ PARTY claiming to be aggrieved by any discriminatory practice prohibited by this**  
 24 **chapter.**

25           **(2) A COMPLAINT MAY BE FILED ON BEHALF OF A PARTY CLAIMING TO BE AGGRIEVED BY A**  
 26 **DISCRIMINATORY PRACTICE PROHIBITED BY THIS CHAPTER IF THE PERSON ACTING ON BEHALF OF**  
 27 **THE AGGRIEVED PARTY IS THE AGGRIEVED PARTY'S GUARDIAN, ATTORNEY, OR DULY AUTHORIZED**  
 28 **REPRESENTATIVE OR AN ADVOCACY GROUP, LABOR ORGANIZATION, OR OTHER ORGANIZATION**  
 29 **ACTING AS AN AUTHORIZED REPRESENTATIVE.**

30           **(3) The complaint must be in the form of a written, verified complaint stating the name and address**

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

5 ~~(2)(4)~~ (a) Except as provided in 49-2-510 and subsection ~~(2)(b)~~ (4)(B) of this section, a complaint  
 6 under this chapter must be filed with the ~~commission~~ DEPARTMENT within 180 days after the alleged  
 7 unlawful discriminatory practice occurred or was discovered.

8 (b) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing  
 9 a grievance in accordance with any grievance procedure established by a collective bargaining agreement,  
 10 contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the  
 11 grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful  
 12 discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within  
 13 120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice  
 14 occurred or was discovered.

15 (c) Any complaint not filed within the times set forth ~~herein~~ in this section may not be considered  
 16 by the commission OR THE DEPARTMENT."

17

18 **Section 8.** Section 49-2-503, MCA, is amended to read:

19 **"49-2-503. Temporary relief by court order.** At any time after a complaint is filed under this  
 20 chapter, a district court may, upon the application of THE COMMISSIONER OR ~~the commission or~~  
 21 complainant, enter a preliminary injunction against a respondent in the case. The procedure for granting the  
 22 order is as provided by statute for preliminary injunctions in civil actions."

23

24 **Section 9.** Section 49-2-504, MCA, is amended to read:

25 **"49-2-504. Informal settlement INVESTIGATION AND CONCILIATION. (1) (A)** The ~~commission~~  
 26 ~~staff~~ DEPARTMENT shall informally investigate the matters set out in ~~a filed~~ THE complaint promptly and  
 27 impartially. If the ~~staff~~ DEPARTMENT determines that the allegations are supported by ~~substantial a~~  
 28 preponderance of the evidence, it shall ~~immediately try to~~ ATTEMPT TO ACHIEVE A RESOLUTION OF THE  
 29 COMPLAINT BY CONFERENCE, CONCILIATION, AND PERSUASION THAT, IN ADDITION TO PROVIDING  
 30 REDRESS FOR THE COMPLAINT, INCLUDES CONDITIONS THAT eliminate the discriminatory practice by

1 ~~conference, conciliation, and persuasion, IF ANY, IDENTIFIED IN THE INVESTIGATION. The staff~~  
2 ~~DEPARTMENT shall, upon the first working day WITHIN 10 BUSINESS DAYS following receipt of a filed~~  
3 ~~complaint, notify a potential respondent that the respondent is the subject of a filed complaint. The~~  
4 ~~notification must be in writing and must include a copy of the filed complaint, together with all documents~~  
5 ~~submitted to the commission or its staff with the complaint. IF REQUESTED, THE DEPARTMENT SHALL~~  
6 ~~ALSO PROVIDE THE PARTIES WITH ALL OTHER INFORMATION RELATED TO THE COMPLAINT IN THE~~  
7 ~~POSSESSION OF THE DEPARTMENT THAT IS NOT CURRENTLY IN THE POSSESSION OF THE PARTIES~~  
8 ~~OR A PARTY. THE DEPARTMENT SHALL MAKE KNOWN TO THE PARTIES THE FACT THAT~~  
9 ~~INFORMATION IS AVAILABLE UPON REQUEST. THE DEPARTMENT MAY NOT INVESTIGATE A~~  
10 ~~COMPLAINT UNTIL IT HAS RECEIVED NOTICE THAT THE RESPONDENT HAS RECEIVED THE~~  
11 ~~DEPARTMENT'S NOTIFICATION OF THE COMPLAINT.~~

12 (B) IF A COMPLAINT IS FILED RELATIVE TO AN EMPLOYMENT-RELATED COMPLAINT AND IF THE  
13 COMMISSIONER DECIDES THAT THE INCLUSION OF DOCUMENTS OR INFORMATION CONTAINED IN THE  
14 COMPLAINT WOULD SERIOUSLY IMPEDE THE RIGHTS OF A PERSON OR THE PROPER INVESTIGATION  
15 OF THE COMPLAINT, THE INFORMATION MAY BE EXCLUDED FROM THE NOTIFICATION BY PROVIDING  
16 A WRITTEN SUMMARY OF THE INFORMATION CONTAINED IN THE COMPLAINT. THE WRITTEN  
17 SUMMARY MUST INCLUDE SUFFICIENT INFORMATION TO GIVE MAXIMUM EFFECT TO THE INTENT OF  
18 THIS CHAPTER.

19 (2) THE RESPONDENT SHALL FILE AN ANSWER TO A COMPLAINT FILED WITH THE DEPARTMENT  
20 WITHIN 10 BUSINESS DAYS OF THE RESPONDENT'S RECEIPT OF THE COMPLAINT. AN ANSWER MAY  
21 BE A RESPONSE SIMPLY ADMITTING OR DENYING THE ALLEGATIONS WITHOUT FURTHER SPECIFICITY  
22 OR REQUESTING ADDITIONAL INFORMATION FROM THE DEPARTMENT. THE TIME FOR FILING AN  
23 ANSWER MAY BE EXTENDED BY A SHOWING OF GOOD CAUSE.

24 (3) THE DEPARTMENT SHALL COMMENCE PROCEEDINGS WITHIN 30 DAYS AFTER RECEIPT OF  
25 A COMPLAINT.

26 (4) THE DEPARTMENT SHALL MAKE A FINDING REGARDING THE MERIT OR NONMERIT OF THE  
27 COMPLAINT WITHIN 180 DAYS AFTER A COMPLAINT IS FILED, EXCEPT THAT THE DEPARTMENT SHALL  
28 MAKE THE FINDING WITHIN 120 DAYS AFTER A COMPLAINT IS FILED UNDER 49-2-305."

29

30 **Section 10.** Section 49-2-505, MCA, is amended to read:

1           "49-2-505. **Contested case hearing.** (1) If the informal efforts to eliminate the alleged  
2 discrimination are unsuccessful, the ~~staff~~ DEPARTMENT shall ~~inform the commission of the failure and the~~  
3 ~~commission shall cause written notice to be served, together with a copy of the complaint, requiring the~~  
4 ~~person, educational institution, financial institution, or governmental entity or agency charged in the~~  
5 ~~complaint to answer the allegations of the complaint at a hearing before the commission~~ HOLD A HEARING  
6 ON THE COMPLAINT. THE DEPARTMENT SHALL SERVE NOTICE OF THE HEARING AND A COPY OF THE  
7 COMPLAINT ON THE PARTIES.

8           (2) (A) IF THE PARTIES MUTUALLY AGREE TO PERMIT THE DEPARTMENT TO RETAIN  
9 JURISDICTION OF THE CASE UNDER THIS CHAPTER FOR A PERIOD OF TIME THAT EXCEEDS 12  
10 MONTHS AFTER THE COMPLAINT WAS FILED, THEN THE PARTIES SHALL STIPULATE TO A SCHEDULE  
11 FOR PROCEEDINGS TO BE ESTABLISHED BY THE DEPARTMENT.

12           (B) THE DEPARTMENT SHALL, NOT LATER THAN 395 DAYS AFTER THE COMPLAINT WAS  
13 FILED, SET A DATE FOR AN ADMINISTRATIVE HEARING IN THE CASE.

14           (C) THE CASE MUST BE HEARD NO LATER THAN 90 DAYS AFTER THE DATE IS SET BY THE  
15 DEPARTMENT. THE DEPARTMENT MAY, IN ITS SOLE DISCRETION, ISSUE A CONTINUANCE OF THE  
16 HEARING DATE ONLY UPON A SHOWING OF GOOD CAUSE.

17           ~~(2)(3)~~ (A) The hearing must be held by the ~~commission~~ DEPARTMENT in the county where the  
18 unlawful conduct is alleged to have occurred unless the ~~person, institution, entity, or agency~~ A PARTY  
19 charged in the complaint ~~or the commission~~ requests AND IS GRANTED a change of venue for good cause  
20 shown. The case in support of the complaint may be presented before the ~~commission~~ DEPARTMENT by  
21 the ~~staff~~, the complainant, or an attorney representing the complainant. The hearing and any subsequent  
22 proceedings under this chapter must be held in accordance with the APPLICABLE PORTIONS OF THE  
23 Montana ~~Administrative Procedure Act~~ except as provided in ~~49-2-508~~ Rules of Civil Procedure AS  
24 ADOPTED BY THE DEPARTMENT.

25           (B) UPON REQUEST OF THE HEARINGS OFFICER, THE DEPARTMENT MAY PRESENT EVIDENCE  
26 WITH REGARD TO ACTIVITY CONDUCTED. HOWEVER, EXCEPT IN CASES BROUGHT PURSUANT TO 42  
27 U.S.C. 3601, ET SEQ., THE DEPARTMENT MAY NOT REPRESENT EITHER PARTY IN A CONTESTED CASE  
28 HEARING.

29           (3) A PARTY MAY APPEAL A DECISION OF THE HEARINGS OFFICER TO THE COMMISSION. A  
30 PARTY SHALL PROVIDE NOTICE OF ITS APPEAL TO THE COMMISSION, THE DEPARTMENT, AND ALL

1 PARTIES WITHIN 10 BUSINESS DAYS OF RECEIPT OF THE NOTICE OF DECISION OF THE  
 2 ADMINISTRATIVE HEARING. THE COMMISSION SHALL HEAR ALL APPEALS WITHIN 120 DAYS OF  
 3 RECEIPT OF NOTICE OF APPEAL. THE COMMISSION SHALL RENDER A DECISION WITHIN 90 DAYS OF  
 4 HEARING THE APPEAL.

5 (4) ALL HEARINGS CONDUCTED UNDER THIS SECTION MAY, UPON STIPULATION OF THE  
 6 PARTIES, BE HEARD TELEPHONICALLY.

7 ~~(3)~~(5) The commission may make provisions for defraying the expenses of an indigent party in a  
 8 contested case hearing held pursuant to this chapter.

9 ~~(4)~~(6) The prevailing party in a hearing under this section may bring an action in district court for  
 10 ~~attorneys' attorney~~ fees. The court in its discretion may allow the prevailing party reasonable ~~attorneys'~~  
 11 attorney fees. An action under this section must comply with the Montana Rules of Civil Procedure."  
 12

13 **Section 11.** Section 49-2-506, MCA, is amended to read:

14 **"49-2-506. Procedure upon a finding of discrimination.** (1) If the commission OR THE  
 15 DEPARTMENT, AFTER A HEARING, finds that a ~~person, institution, entity, or agency~~ PARTY against whom  
 16 a complaint was filed has engaged in the discriminatory practice alleged in the complaint, the commission  
 17 OR THE DEPARTMENT shall order ~~him the person or it the institution, entity, or agency~~ PARTY to refrain  
 18 from engaging in the discriminatory conduct. The order may:

19 (a) prescribe conditions on the accused's future conduct relevant to the type of discriminatory  
 20 practice found;

21 (b) require any reasonable measure to correct the discriminatory practice and to rectify any harm,  
 22 pecuniary or otherwise, to the person discriminated against;

23 (c) require a report on the manner of compliance.

24 (2) ~~Except as provided in 49-2-510, the~~ The EXCEPT AS PROVIDED IN 49-2-510, THE order may  
 25 not require the payment of ~~any~~ punitive damages.

26 (3) Whenever a commission OR DEPARTMENT order or conciliation agreement requires inspection  
 27 by the ~~commission staff~~ DEPARTMENT for a period of time to determine if the respondent is complying with  
 28 that order or agreement, the period of time may not be more than ~~3 years~~ 1 year."  
 29

30 **Section 12.** Section 49-2-508, MCA, is amended to read:



1           **"49-2-508. Enforcement of commission OR DEPARTMENT order OR CONCILIATION AGREEMENT.**  
 2 If the ~~commission's~~ order ISSUED UNDER 49-2-506 is not obeyed, ~~the commission staff or THE~~  
 3 COMMISSIONER OR a party may petition the district court in the county where the discriminatory practice  
 4 occurred or in which the respondent resides or transacts business to enforce the commission's OR  
 5 DEPARTMENT'S order by any appropriate order. THE COMMISSIONER OR A PARTY MAY ALSO  
 6 COMMENCE A CIVIL ACTION IN AN APPROPRIATE DISTRICT COURT FOR RELIEF FOR A BREACH OF A  
 7 CONCILIATION AGREEMENT."

8

9           **Section 13.** Section 49-2-509, MCA, is amended to read:

10           **"49-2-509. Filing a Removal CONCLUSION of complaint in to -- FILING IN district court.** (1) Except  
 11 as provided in subsection (2) ~~or with respect to complaints alleging a violation of 49-2-305~~, the ~~commission~~  
 12 ~~staff~~ DEPARTMENT shall, at the request of either party, ~~issue a letter entitling the complainant or the~~  
 13 ~~respondent to file remove a discrimination action in to district court~~ CONCLUDE THE ADMINISTRATIVE  
 14 PROCEEDINGS if:‡

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

16           (A) THE DEPARTMENT HAS COMPLETED ITS INVESTIGATION IN A COMPLAINT FILED PURSUANT  
 17 TO 49-2-305; OR

18           (B) 12 MONTHS HAVE ELAPSED SINCE THE COMPLAINT WAS FILED; and

19           ~~(b) 12 months have elapsed since the complaint was filed.~~

20           (2) The ~~commission~~ DEPARTMENT staff may not refuse to ~~permit removal of a case to district court~~  
 21 CONCLUDE THE ADMINISTRATIVE PROCEEDINGS if unless:

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

24           ~~(b)~~ (a) the party requesting ~~removal~~ THE CONCLUSION OF THE ADMINISTRATIVE PROCEEDINGS  
 25 has waived the right to request ~~removal to~~ FILING IN the district court;

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

29           ~~(d)~~ (c) the party requesting ~~removal~~ CONCLUSION OF THE ADMINISTRATIVE PROCEEDINGS has  
 30 unsuccessfully attempted through court litigation to prevent the ~~commission staff~~ DEPARTMENT from

1 investigating the complaint.

2 (3) The ~~commission~~ DEPARTMENT ~~staff may~~ shall dismiss a complaint filed under ~~49-2-504~~ this  
3 chapter and ~~allow~~ the complainant ~~to~~ may file a discrimination action in district court if:

4 (a) the commission OR THE DEPARTMENT ~~staff determines that the commission~~ lacks jurisdiction  
5 over the complaint;

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

8 (c) the ~~commission~~ DEPARTMENT ~~staff~~ determines that the allegations of the complaint are not  
9 supported by ~~substantial~~ A PREPONDERANCE OF THE evidence; OR

10 (D) THE DEPARTMENT DETERMINES THAT THE COMMISSION OR THE DEPARTMENT WILL NOT  
11 OR CANNOT HOLD A HEARING WITHIN 12 MONTHS AFTER THE FILING OF THE COMPLAINT.

12 (4) A decision of the ~~commission~~ DEPARTMENT ~~staff~~ to dismiss a complaint brought under this  
13 chapter or to refuse to permit removal to the district court is final unless a party seeks review by filing  
14 objections within 14 days after the decision is served on ~~him~~ the party. The commission shall review the  
15 decision in informal proceedings under 2-4-604, ~~except that 2-4-604(5) applies only to review of a refusal~~  
16 ~~to permit removal. A party may ask the district court to review a decision of the commission made under~~  
17 this part SECTION. The review must be de novo.

18 (5) Within 90 days after receipt of a notice ~~of dismissal~~ under subsection (1) OR (3) or an order  
19 under subsection (4) of affirmance of a dismissal, whichever occurs later, or of a letter issued under  
20 subsection (1), the complainant may ~~petition~~ COMMENCE A CIVIL ACTION IN the district court in the  
21 district in which the alleged violation occurred for appropriate relief. Except as provided in 49-2-510, if the  
22 ~~claimant~~ COMPLAINANT fails to ~~petition~~ COMMENCE A CIVIL ACTION IN the district court within 90 days  
23 after receipt of the letter, notice, or order issued by the commission ~~staff~~ OR THE DEPARTMENT, the claim  
24 ~~shall be~~ is barred.

25 (6) If the district court finds, in an action under this section, that a person, institution, entity, or  
26 agency against whom or which a complaint was filed has engaged in the unlawful discriminatory practice  
27 alleged in the complaint, the court may provide the same relief as described in 49-2-506 for a commission  
28 order. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees.

29 (7) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged  
30 violation of CHAPTER 3 OR this chapter, including acts that may otherwise also constitute a violation of

1 the discrimination provisions of Article II, section 4, of the Montana constitution or 49-1-102. ~~No other~~  
 2 ~~Another~~ A claim or request for relief based upon ~~such the~~ acts may not be entertained by a district court  
 3 other than by the procedures specified in this chapter."

4

5 **Section 14.** Section 49-2-510, MCA, is amended to read:

6 "**49-2-510. Procedures and remedies for enforcement of housing discrimination laws.** (1) A  
 7 complaint may be filed with the ~~commission~~ DEPARTMENT by ~~or on behalf of~~ OR ON BEHALF OF a ~~person~~  
 8 PARTY claiming to be aggrieved by any discriminatory practice prohibited by 49-2-305. The complaint must  
 9 be in written form, VERIFIED BY THE AGGRIEVED PARTY, and must be filed with the ~~commission~~  
 10 DEPARTMENT within ~~1 year~~ 90 180 days after the alleged unlawful discriminatory practice occurred or was  
 11 discovered.

12 (2) ~~(a) Except as provided in subsection (2)(b), if~~ if the DEPARTMENT, ON APPEAL, OR THE  
 13 ~~commission,~~ in a hearing under 49-2-505, finds that a ~~person, institution, entity, or agency~~ PARTY against  
 14 whom a complaint was filed under this part has engaged in a discriminatory practice in violation of  
 15 49-2-305, the DEPARTMENT OR THE commission may, in addition to the remedies and injunctive and other  
 16 equitable relief provided by 49-2-506, ~~to vindicate the public interest,~~ TO VINDICATE THE PUBLIC  
 17 INTEREST, assess a civil penalty ~~purcuant to the statutes governing the award of punitive damages in this~~  
 18 state:

19 ~~(i)(a)~~ (a) in an amount not exceeding \$10,000 if the respondent has not been ~~found~~ adjudged in any  
 20 prior judicial or formal administrative proceeding to have committed any prior discriminatory housing  
 21 practice in violation of 49-2-305; and

22 ~~(ii)(b)~~ (b) in an amount not exceeding \$25,000 if the respondent has been ~~found~~ adjudged in any prior  
 23 judicial or formal administrative proceedings to have committed ~~one~~ one or more similar discriminatory  
 24 housing ~~practice~~ practices in repeated violation of a subsection of 49-2-305 during the 5-year period ending  
 25 on the date of the filing of the written complaint; and

26 ~~(iii)~~ (c) in an amount not exceeding \$50,000 if the respondent has been ~~found~~ found to have committed two  
 27 or more discriminatory housing practices in violation of 49-2-305 during the 7-year period ending on the  
 28 date of the filing of the complaint.

29 ~~(b) If the acts constituting the discriminatory housing practice that is the object of the complaint~~  
 30 ~~are committed by the same natural person who has been previously found to have committed acts~~

1 ~~constituting a discriminatory housing practice, the civil penalties provided in subsections (2)(a)(iii) and~~  
 2 ~~(2)(a)(iii) may be imposed without regard to the period of time within which any prior discriminatory housing~~  
 3 ~~practice occurred.~~

4 (3) In the case of an order with respect to a discriminatory housing practice in violation of  
 5 49-2-305 that occurred in the course of a business subject to licensing or regulation by a governmental  
 6 agency, the commission shall, no later than 30 days after the date of the issuance of the order or, if the  
 7 order is judicially reviewed, no later than 30 days after the order is ~~in substance~~ affirmed;

8 ~~(a) send copies of the findings of fact, the conclusions of law, and the order to the licensing or~~  
 9 ~~regulatory agency; and~~

10 ~~(b) recommend to the licensing or regulatory agency appropriate disciplinary action, including,~~  
 11 ~~where appropriate, the suspension or revocation of the license of the respondent.~~

12 (4) (a) When a complaint is filed under 49-2-305, a complainant, or a respondent, or aggrieved  
 13 ~~person on whose behalf the complaint was filed~~ may elect to have the claims decided in a civil action in  
 14 lieu of a hearing under 49-2-505. The election must be made no later than 20 days after receipt by the  
 15 electing person of service of notice of certification for hearing under 49-2-505. The person making the  
 16 election shall give notice to the ~~commission~~ DEPARTMENT and to all ~~other~~ complainants and OTHER  
 17 ~~respondents to whom the complaint relates~~ named in the complaint. Within 30 days after the election is  
 18 made, the ~~commission~~ complainant, THE COMMISSIONER, OR THE AGGRIEVED PARTY shall MAY  
 19 commence a civil action in an appropriate district court ~~on behalf of the aggrieved person if the commission~~  
 20 ~~staff has made a finding that the allegations of the complaint are supported by substantial evidence. If the~~  
 21 ~~commission staff has made a finding that the allegations of the complaint are not supported by substantial~~  
 22 ~~evidence, the complainant may commence a civil action in an appropriate district court in accordance with~~  
 23 ~~subsection (5). An aggrieved person with respect to the issues to be determined in a civil action brought~~  
 24 ~~by the commission staff may intervene in the action~~ ON BEHALF OF THE AGGRIEVED PARTY IF THE  
 25 DEPARTMENT HAS MADE A FINDING THAT THE ALLEGATIONS OF THE COMPLAINT ARE SUPPORTED  
 26 BY A PREPONDERANCE OF THE EVIDENCE. IF THE DEPARTMENT HAS MADE A FINDING THAT THE  
 27 ALLEGATIONS OF THE COMPLAINT ARE NOT SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE,  
 28 THE COMPLAINANT MAY COMMENCE A CIVIL ACTION IN AN APPROPRIATE DISTRICT COURT IN  
 29 ACCORDANCE WITH SUBSECTION (5). AN AGGRIEVED PARTY WITH RESPECT TO THE ISSUES TO BE  
 30 DETERMINED IN A CIVIL ACTION BROUGHT BY THE DEPARTMENT MAY INTERVENE IN THE ACTION.

1 (b) The ~~commission~~ DEPARTMENT may not continue administrative proceedings on a complaint  
2 after an election is made in accordance with subsection (4)(a).

3 (5) (a) An aggrieved ~~person~~ PARTY may commence a civil action in an appropriate district court  
4 within 2 years after an alleged unlawful discriminatory practice under 49-2-305 occurred or was discovered  
5 or within 2 years of the breach of a conciliation agreement entered into under 49-2-504 in a case alleging  
6 a violation of 49-2-305. The computation of the 2-year period does not include any time during which an  
7 administrative proceeding under this title was pending with respect to a complaint alleging a violation of  
8 49-2-305. The tolling of the time limit for commencing a civil action does not apply to actions arising from  
9 breach of a conciliation agreement.

10 (b) An aggrieved ~~person~~ PARTY may commence a civil action under this subsection for a violation  
11 of 49-2-305 whether or not a complaint has been filed under 49-2-501 and without regard to the status  
12 of a complaint filed with the ~~commission~~ DEPARTMENT except as provided in subsection (5)(d). If the  
13 ~~commission~~ DEPARTMENT has obtained a conciliation agreement with the consent of the aggrieved ~~person~~  
14 PARTY, an action may not be filed under this subsection by the aggrieved ~~person~~ PARTY regarding the  
15 alleged violation of 49-2-305 that forms the basis for the complaint except for the purpose of enforcing the  
16 terms of the agreement.

17 (c) The commission OR THE DEPARTMENT may not continue administrative proceedings on a  
18 complaint after the ~~beginning of a trial~~ FILING of a civil action commenced by the aggrieved party under  
19 this subsection (5) seeking relief with respect to the same alleged violation of 49-2-305.

20 (d) An aggrieved ~~person~~ PARTY may not commence a civil action under this subsection (5) with  
21 respect to an alleged violation of 49-2-305 if the commission OR THE DEPARTMENT has commenced a  
22 hearing on the record under 49-2-505 regarding the same complaint.

23 (e) Upon application by a person alleging a violation of 49-2-305 in a civil action under this  
24 subsection (5) or by a person against whom the violation is alleged, the court may:

25 (i) appoint an attorney for the applicant and the respondent; or

26 (ii) authorize the commencement or continuation of a civil action without the payment of fees,  
27 costs, or security if, in the opinion of the court, the ~~applicant party~~ party is financially unable to bear the costs  
28 of the civil action. As in all actions brought in forma pauperis, the burden of showing lack of financial ability  
29 rests with the party claiming financial hardship.

30 ~~(f) Upon timely application, the commission may intervene in a civil action brought under this~~

1 ~~subsection (5) if the commission certifies that the case is of general public importance. Upon intervention,~~  
 2 ~~the commission may obtain the same relief that would be available to the commission under subsection (7).~~

3 (6) If the court finds that a ~~person, institution, entity, or agency~~ PARTY against whom a complaint  
 4 was filed under this section has been adjudicated in a civil or formal administrative proceeding to have  
 5 engaged in a similar discriminatory practice in violation of a subsection of 49-2-305, the court may, in  
 6 addition to the other remedies and injunctive and other equitable relief provided under 49-2-506 consistent  
 7 with the provisions of subsection (2), award ~~punitive additional~~ PUNITIVE damages. The court may also  
 8 award attorney fees to the substantively prevailing party.

9 ~~(7) (a) Whenever the commission has reasonable cause to believe that a person or group of persons~~  
 10 ~~is engaged in a pattern or practice in violation of 49-2-305 or that a group of persons has been~~  
 11 ~~discriminated against in violation of 49-2-305 and the denial raises an issue of general public importance,~~  
 12 ~~the commission may commence a civil action in an appropriate district court. The commission may also~~  
 13 ~~commence a civil action in any appropriate district court for relief regarding breach of a conciliation~~  
 14 ~~agreement in a case regarding an alleged violation of 49-2-305 if the commission is a party to the~~  
 15 ~~agreement.~~

16 ~~(b) The commission may file a civil action under this subsection (7) within 18 months after the~~  
 17 ~~alleged breach of the conciliation agreement or unlawful discriminatory practice occurred or was discovered.~~

18 ~~(c) In a civil action under this subsection (7), the court may, in addition to the remedies provided~~  
 19 ~~under 49-2-506, assess a civil penalty against the respondent;~~

20 ~~(i) in an amount not exceeding \$50,000 for a first violation; and~~

21 ~~(ii) in an amount not exceeding \$100,000 for any subsequent violation.~~

22 ~~(d) Upon timely application, a person may intervene in a civil action under this subsection (7) that~~  
 23 ~~involves an alleged violation of 49-2-305 with respect to which the intervener is an aggrieved person.~~

24 ~~(8)(7) (A) Civil~~ All EXCEPT AS PROVIDED IN SUBSECTION (7)(B), ALL civil and administrative  
 25 penalties and other revenue generated under this section must be paid to the state treasurer to be deposited  
 26 in an account in the state special revenue fund to be used by the commission for housing discrimination  
 27 enforcement part must be deposited into the state's general fund.

28 (B) DAMAGES OR PENALTIES, WHETHER MONETARY OR OTHERWISE, MAY NOT INURE TO AN  
 29 ORGANIZATION UNLESS THE ORGANIZATION IS AN AGGRIEVED PARTY. THIS SECTION DOES NOT  
 30 AFFECT ANY AMOUNT OWED TO AN AGGRIEVED PARTY."

1 ~~Section 14. Section 49-2-601, MCA, is amended to read:~~

2 ~~"49-2-601. Criminal penalty. A (1) Except as provided in subsection (2), a person, who or an~~  
 3 ~~educational institution, or financial institution, either public or private, or a governmental entity or agency~~  
 4 ~~who or which that willfully engages in an unlawful discriminatory practice prohibited by this chapter or~~  
 5 ~~willfully resists, prevents, impedes, or interferes with the commission, the department, or any of its~~  
 6 ~~authorized representatives in the performance of a duty under this chapter or who or which willfully violates~~  
 7 ~~an order of the commission or willfully violates this chapter in any other manner is guilty of a misdemeanor~~  
 8 ~~and is punishable by a fine of not more than \$500 or by imprisonment for not more than 6 months, or both.~~

9 ~~(2) A person may not be subject to any penalty under this section if the person acts in a manner~~  
 10 ~~consistent with the protection of the person's rights to avoid criminal or civil self-incrimination."~~

11  
 12 NEW SECTION. SECTION 15. ENFORCEMENT. (1) WHEN A POSSIBLE VIOLATION OF THIS  
 13 CHAPTER COMES TO THE ATTENTION OF THE DEPARTMENT, THE COMMISSIONER MAY INITIATE A  
 14 COMPLAINT ON BEHALF OF THE DEPARTMENT. THE COMPLAINT MUST BE SIGNED BY THE  
 15 COMMISSIONER.

16 (2) A PERSON IS NOT SUBJECT TO PENALTIES UNDER THIS CHAPTER IF COMPLIANCE WITH  
 17 THE PROVISIONS OF THIS CHAPTER WOULD CAUSE THE PERSON TO VIOLATE THE PROVISIONS OF  
 18 ANOTHER STATE LAW.

19  
 20 NEW SECTION. SECTION 16. ENFORCEMENT AND REMEDIES. THE PROCEDURES SET FORTH  
 21 IN CHAPTER 2, PART 5, APPLY TO COMPLAINTS ALLEGING A VIOLATION OF THIS CHAPTER.

22  
 23 NEW SECTION. SECTION 17. STAFF TRANSFER. THE STAFF OF THE COMMISSION IS  
 24 TRANSFERRED TO THE DEPARTMENT. THE STAFF IS UNDER THE DIRECTION AND CONTROL OF THE  
 25 COMMISSIONER OF LABOR AND INDUSTRY. THE STAFF SHALL PERFORM FUNCTIONS AS DIRECTED  
 26 AND IN ACCORDANCE WITH THE EXPRESS AND IMPLIED PURPOSES OF (THIS ACT). THE TRANSFER  
 27 OF STAFF IS SUBJECT TO 2-15-131 THROUGH 2-15-137.

28  
 29 NEW SECTION. SECTION 18. REPEALER. SECTIONS 49-2-201, 49-2-502, 49-3-304, 49-3-305,  
 30 49-3-306, 49-3-307, 49-3-308, 49-3-309, 49-3-310, 49-3-311, AND 49-3-312, MCA, ARE REPEALED.

1            NEW SECTION. Section 19. Codification instruction INSTRUCTIONS. (1) ~~Section~~ SECTIONS 1  
2 AND 15] ~~is~~ ARE intended to be codified as an integral part of Title 49, chapter 2, part 2, and the provisions  
3 of Title 49, chapter 2, part 2, apply to ~~[section~~ SECTIONS 1 AND 15].

4            (2) [SECTION 16] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 49, CHAPTER  
5 3, PART 3, AND THE PROVISIONS OF TITLE 49, CHAPTER 3, PART 3, APPLY TO [SECTION 16].

6  
7            NEW SECTION. Section 20. ~~Retroactive applicability~~ APPLICABILITY -- SAVING CLAUSE. The  
8 provisions of 49-2-305(3)(b) apply retroactively, within the meaning of 1-2-109, to any proceeding pending  
9 on or commenced on or after [the effective date of this act], regardless of when the printing or publication  
10 occurred, if the proceeding was commenced by the commission for human rights staff in the absence of  
11 a complaint by an aggrieved person. [THIS ACT] DOES NOT AFFECT ANY ADMINISTRATIVE OR JUDICIAL  
12 PROCEEDING PENDING OR COMMENCED PRIOR TO [THE EFFECTIVE DATE OF THIS ACT]. [THIS ACT]  
13 APPLIES TO COMPLAINTS OR PROCEEDINGS FILED ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT].

14  
15            NEW SECTION. Section 21. Effective date. [This act] is effective ~~on passage and approval~~ JULY  
16 1, 1997.

17

-END-



## SENATE BILL NO. 350

INTRODUCED BY MCNUTT, SLITER, HIBBARD, KRENZLER, WELLS, MCGEE, JORE, MOOD, KEENAN,  
 OHS, DEVLIN, BEAUDRY, MESAROS, WAGNER, BECK, MCCARTHY, GRADY, SWYSGOOD, HARP,  
 STANG, SHEA, FOSTER, BISHOP, DENNY, THOMAS, CLARK, GRINDE, ANDERSON, M. TAYLOR,  
 REHBEIN, MAHLUM, KASTEN, MILLER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE  
 COMMISSION FOR HUMAN RIGHTS; PROVIDING THAT THE COMMISSION MAY NOT HIRE ITS OWN  
 STAFF; TRANSFERRING THE STAFF OF THE COMMISSION TO THE DEPARTMENT OF LABOR AND  
INDUSTRY; PROVIDING THAT THE STAFF OF THE COMMISSION IS NOT INDEPENDENT OF THE  
~~COMMISSION OR COMMISSIONER~~ OF LABOR; PROVIDING THAT ~~COMMISSION STAFF~~ THE  
DEPARTMENT MAY NOT FILE A COMPLAINT ON BEHALF OF ANOTHER PERSON; REQUIRING THE  
~~COMMISSION TO ADOPT~~ ADOPTION OF THE MONTANA RULES OF CIVIL PROCEDURE, THE MONTANA  
 RULES OF EVIDENCE, AND APPROPRIATE RULES OF THE MONTANA CODE OF CRIMINAL PROCEDURE  
 AS PART OF ITS PROCEDURAL RULES; ~~REQUIRING A PATTERN OR PRACTICE THAT SHOWS A~~  
~~CONSCIOUS AND INTENTIONAL DISREGARD FOR THE PROHIBITION AGAINST DISCRIMINATION IN~~  
~~HOUSING ADVERTISEMENTS BEFORE A VIOLATION OCCURS~~; PROVIDING THAT THE COMMISSION  
~~COMMISSIONER~~ MAY NOT APPLY TO A DISTRICT COURT FOR A PRELIMINARY INJUNCTION AGAINST  
 A RESPONDENT; REQUIRING ~~COMMISSION STAFF~~ THE DEPARTMENT TO INFORM A POTENTIAL  
 RESPONDENT WITHIN ~~1 WORKING DAY~~ 10 BUSINESS DAYS AFTER RECEIPT OF A COMPLAINT;  
 PREVENTING THE ~~COMMISSION~~ DEPARTMENT FROM REQUESTING A CHANGE OF VENUE IN A  
 CONTESTED CASE HEARING; PROHIBITING ~~COMMISSION STAFF~~ THE DEPARTMENT FROM PETITIONING  
 A DISTRICT COURT FOR ENFORCEMENT OF A COMMISSION ORDER; RESTRICTING THE ~~COMMISSION~~  
DEPARTMENT FROM DENYING ~~REMOVAL~~ THE FILING OF A CASE ~~TO~~ IN DISTRICT COURT; ALLOWING  
 A RESPONDENT TO REMOVE A CASE TO DISTRICT COURT; ~~REQUIRING A CASE REMOVED TO DISTRICT~~  
~~COURT TO BE HEARD DE NOVO~~; REVISING PENALTY PROVISIONS; ~~PROVIDING THAT A PERSON MAY~~  
~~AVOID SELF-INCRIMINATION IN DISCRIMINATION CASES~~; AMENDING SECTIONS 2-15-1706, 39-1-102,  
49-2-101, 49-2-203, 49-2-204, ~~49-2-305,~~ 49-2-501, 49-2-503, 49-2-504, 49-2-505, 49-2-506, 49-2-508,  
 49-2-509, AND 49-2-510, AND ~~49-2-601,~~ MCA; REPEALING SECTIONS 49-2-201, 49-2-502, 49-3-304,  
49-3-305, 49-3-306, 49-3-307, 49-3-308, 49-3-309, 49-3-310, 49-3-311, AND 49-3-312, MCA; AND

1 PROVIDING AN ~~IMMEDIATE~~ EFFECTIVE DATE AND A ~~RETROACTIVE~~ AN APPLICABILITY DATE."

2

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

4

5 NEW SECTION. Section 1. Purpose. It is the intent of the legislature that the commission sit in  
6 independent judgment of complaints of alleged discrimination in Montana and that the ~~commission~~ staff  
7 operate under the direction and control of the commissioner ~~of labor~~. The staff is not independent of the  
8 commissioner. It is the intent of the legislature that the commission and the ~~commission staff~~  
9 DEPARTMENT not favor ~~or assist~~, directly or indirectly, complainants or respondents with procedural or  
10 substantive matters of discrimination in Montana. The commission AND THE DEPARTMENT shall maintain  
11 the highest standards of objectivity and impartiality when judging cases asserting alleged discrimination in  
12 Montana. IT IS NOT THE INTENT OF THE LEGISLATURE THAT THE DEPARTMENT BE PROHIBITED FROM  
13 DISMISSING MATTERS, FROM REFERRING MATTERS TO OTHER AGENCIES FOLLOWING AN INITIAL  
14 INQUIRY AND INTERVIEW, OR FROM REACHING A DECISION IN AN INVESTIGATION OR CONTESTED  
15 CASE HEARING.

16

17 **Section 2.** Section 2-15-1706, MCA, is amended to read:

18 **"2-15-1706. Commission for human rights -- allocation -- quasi-judicial.** (1) There is a commission  
19 for human rights.

20 (2) The commission consists of five members appointed by the governor with the consent of the  
21 senate.

22 (3) The commission is designated as a quasi-judicial board for the purposes of 2-15-124 and its  
23 members ~~shall~~ must be compensated and receive travel expenses as provided for in 2-15-124.

24 (4) The commission is allocated to the department of labor and industry for administrative purposes  
25 only as provided in 2-15-121, ~~except that the commission may hire its own personnel, may seek and~~  
26 ~~receive private and federal funds in its own name, and may determine all matters of policy concerning the~~  
27 ~~use of its budget. Subsection (2)(d) of 2-15-121 shall not apply for purposes of this section."~~

28

29 **SECTION 3. SECTION 39-1-102, MCA, IS AMENDED TO READ:**

30 **"39-1-102. Duties of department.** The department shall enforce all the laws of Montana relating

1 to hours of labor, conditions of labor, prosecution of employers who default in payment of wages,  
 2 protection of employees, and all laws relating to child labor ~~which~~ that regulate the employment of children  
 3 in any manner and shall administer the laws of the state relating to free employment offices and all other  
 4 state labor laws. The department shall investigate and enforce the laws prohibiting discrimination contained  
 5 in Title 49, chapters 2 and 3, and provide a means for conciliation between parties."

6  
 7 **SECTION 4. SECTION 49-2-101, MCA, IS AMENDED TO READ:**

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

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

13 (2) "Aggrieved party" means a person who can demonstrate a specific personal and legal interest,  
 14 as distinguished from a general interest, and who has been or is likely to be specially and injuriously  
 15 affected by a violation of this chapter.

16 ~~(2)(3)~~ "Commission" means the commission for human rights provided for in 2-15-1706.

17 (4) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

18 ~~(3)(5)~~ "Credit" means the right granted by a creditor to a person to defer payment of a debt, to  
 19 incur debt and defer its payment, or to purchase property or services and defer payment. It includes without  
 20 limitation the right to incur and defer debt that is secured by residential real property.

21 ~~(4)(6)~~ "Credit transaction" means any invitation to apply for credit, application for credit, extension  
 22 of credit, or credit sale.

23 ~~(5)(7)~~ "Creditor" means a person who, regularly or as a part of the person's business, arranges for  
 24 the extension of credit for which the payment of a financial charge or interest is required, whether in  
 25 connection with loans, sale of property or services, or otherwise.

26 (8) "Department" means the department of labor and industry provided for in 2-15-1701.

27 ~~(6)(9)~~ "Educational institution" means a public or private institution and includes an academy;  
 28 college; elementary or secondary school; extension course; kindergarten; nursery; school system;  
 29 university; business, nursing, professional, secretarial, technical, or vocational school; or agent of an  
 30 educational institution.

1           ~~(7)~~(10) "Employee" means an individual employed by an employer.

2           ~~(8)~~(11) "Employer" means an employer of one or more persons or an agent of the employer but  
3 does not include a fraternal, charitable, or religious association or corporation if the association or  
4 corporation is not organized either for private profit or to provide accommodations or services that are  
5 available on a nonmembership basis.

6           ~~(9)~~(12) "Employment agency" means a person undertaking to procure employees or opportunities  
7 to work.

8           ~~(10)~~(13) "Financial institution" means a commercial bank, trust company, savings bank, finance  
9 company, savings and loan association, credit union, investment company, or insurance company.

10           ~~(11)~~(14) "Housing accommodation" means a building or portion of a building, whether constructed  
11 or to be constructed, that is or will be used as the sleeping quarters of its occupants.

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

15           ~~(13)~~(16) "National origin" means ancestry.

16           (17) (a) "Organization" means a corporation, association, or any other legal or commercial entity  
17 that engages in advocacy of, enforcement of, or compliance with legal interests affected by this chapter.

18           (b) The term does not include a labor organization.

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

22           ~~(15)~~(19) (a) "Physical or mental disability" means:

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

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

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

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

1 ~~(16)~~(20) (a) "Public accommodation" means a place that caters or offers its services, goods, or  
 2 facilities to the general public subject only to the conditions and limitations established by law and  
 3 applicable to all persons. It includes without limitation a public inn, restaurant, eating house, hotel,  
 4 roadhouse, place where food or alcoholic beverages or malt liquors are sold for consumption, motel, soda  
 5 fountain, soft drink parlor, tavern, nightclub, trailer park, resort, campground, barbershop, beauty parlor,  
 6 bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor,  
 7 transportation company, or hospital and all other public amusement and business establishments.

8 (b) Public accommodation does not include an institution, club, or place of accommodation that  
 9 proves that it is by its nature distinctly private. An institution, club, or place of accommodation may not  
 10 be considered by its nature distinctly private if it has more than 100 members, provides regular meal  
 11 service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or  
 12 beverages, directly or indirectly, from or on behalf of nonmembers, for the furtherance of trade or business.  
 13 For the purposes of this subsection ~~(16)~~ (20), any lodge of a recognized national fraternal organization is  
 14 considered by its nature distinctly private.

15 ~~(17) "Staff" or "commission staff" means the staff of the commission for human rights."~~  
 16

17 **Section 5.** Section 49-2-203, MCA, is amended to read:

18 **"49-2-203. Subpoena power.** (1) The commission may subpoena witnesses, take the testimony  
 19 of any person under oath, administer oaths, and, in connection therewith, require the production for  
 20 examination of books, papers, or other tangible evidence relating to a matter ~~either under investigation by~~  
 21 ~~the commission staff or in question before the commission. The commission may delegate the foregoing~~  
 22 ~~powers to a person within the staff for the purpose of investigating a complaint.~~

23 (2) THE DEPARTMENT'S STAFF MAY REQUEST THAT A SUBPOENA RELATING TO A MATTER  
 24 UNDER INVESTIGATION BE ISSUED BY THE COMMISSIONER OR THE COMMISSIONER'S AUTHORIZED  
 25 REPRESENTATIVE. THE AUTHORIZED REPRESENTATIVE MAY NOT BE INVOLVED IN ENFORCEMENT OF  
 26 HUMAN RIGHTS. THE COMMISSIONER MAY SUBPOENA WITNESSES, TAKE TESTIMONY UNDER OATH,  
 27 ADMINISTER OATHS, AND REQUIRE THE PRODUCTION, FOR EXAMINATION, OF BOOKS, PAPERS, OR  
 28 OTHER INTANGIBLE EVIDENCE.

29 (3) A PARTY MAY REQUEST SUBPOENAS FROM THE COMMISSIONER FOR THE PURPOSES  
 30 PROVIDED IN SUBSECTION (2).

1           ~~(2)(4)~~ Subpoenas issued pursuant to this section may be enforced as provided in 2-4-104 of the  
2 Montana Administrative Procedure Act."

3

4           **Section 6.** Section 49-2-204, MCA, is amended to read:

5           "**49-2-204. ~~Commission to adopt rules~~ RULES.** (1) The commission shall adopt procedural and  
6 substantive rules necessary to implement THE COMMISSION'S RESPONSIBILITIES UNDER this chapter.  
7 Rulemaking procedures ~~shall~~ must comply with the requirements of the Montana Administrative Procedure  
8 Act. At a minimum, the commission shall adopt as part of its procedural rules ALL APPLICABLE PORTIONS  
9 OF the Montana Rules of Civil Procedure and the Montana Rules of Evidence. The commission may adopt  
10 a portion of the Montana Code of Criminal Procedure, THE PROCEDURAL PROVISIONS OF TITLE 46 as it  
11 considers appropriate.

12           (2) THE DEPARTMENT SHALL ADOPT PROCEDURAL AND SUBSTANTIVE RULES NECESSARY TO  
13 IMPLEMENT THE DEPARTMENT'S RESPONSIBILITIES UNDER THIS CHAPTER. RULES ADOPTED UNDER  
14 THIS CHAPTER MUST COMPLY WITH THE MONTANA ADMINISTRATIVE PROCEDURE ACT. FOR  
15 CONTESTED CASE HEARINGS CONDUCTED PURSUANT TO 49-2-505, THE DEPARTMENT SHALL ADOPT  
16 ALL APPLICABLE PORTIONS OF THE MONTANA RULES OF CIVIL PROCEDURE AND THE MONTANA  
17 RULES OF EVIDENCE."

18

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

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

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

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

29           ~~(c) to make an inquiry of the sex, marital status, race, creed, religion, age, familial status, physical~~  
30 ~~or mental disability, color, or national origin of a person seeking to buy, lease, or rent a housing~~

1 ~~accommodation or property for the purpose of discriminating on the basis of sex, marital status, race,~~  
2 ~~creed, religion, age, familial status, physical or mental disability, color, or national origin;~~

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

6 ~~(e) to represent to a person that a housing accommodation or property is not available for~~  
7 ~~inspection, sale, or rental because of that person's sex, marital status, race, creed, religion, age, familial~~  
8 ~~status, physical or mental disability, color, or national origin when the housing accommodation or property~~  
9 ~~is in fact available; or~~

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

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

17 ~~(3) (a) Except as provided in subsection (3)(b), it is an unlawful discriminatory practice to make,~~  
18 ~~print, or publish or cause to be made, printed, or published any notice, statement, or advertisement that~~  
19 ~~indicates any preference, limitation, or discrimination that is prohibited by subsection (1) or any intention~~  
20 ~~to make or have a prohibited preference, limitation, or discrimination.~~

21 ~~(b) If the printing or publication of the notice, statement, or advertisement was by a person~~  
22 ~~regularly engaged in the business of publishing classified housing notices, statements, or advertisements,~~  
23 ~~subsection (3)(a) is not violated unless it is shown that the printing or publication of the notice, statement,~~  
24 ~~or advertisement is part of a pattern or practice of printing or publishing notices, statements, or~~  
25 ~~advertisements in violation of subsection (3)(a) that demonstrates a conscious and intentional disregard for~~  
26 ~~the provisions of subsections (1) and (3)(a).~~

27 ~~(4) It is an unlawful discriminatory practice for a person to discriminate because of a physical or~~  
28 ~~mental disability of a buyer, lessee, or renter; a person residing in or intending to reside in or on the housing~~  
29 ~~accommodation or property after it is sold, leased, rented, or made available; or any person associated with~~  
30 ~~that buyer, lessee, or renter;~~

- 1           ~~(a) in the sale, rental, or availability of the housing accommodation or property;~~
- 2           ~~(b) in the terms, conditions, or privileges of a sale or rental of the housing accommodation or~~
- 3 ~~property; or~~
- 4           ~~(c) in the provision of services or facilities in connection with the housing accommodation or~~
- 5 ~~property.~~
- 6           ~~(5) For purposes of subsections (1) and (4), discrimination because of physical or mental disability~~
- 7 ~~includes:~~
- 8           ~~(a) refusal to permit, at the expense of the person with a disability, reasonable modifications of~~
- 9 ~~existing premises occupied or to be occupied by the person with a disability if the modifications may be~~
- 10 ~~necessary to allow the person full enjoyment of the premises, except that in the case of a lease or rental,~~
- 11 ~~the landlord may, where when it is reasonable to do so, condition permission for a modification on the~~
- 12 ~~lessor's or renter's agreement to restore the interior of the premises to the condition that existed before~~
- 13 ~~the modification, except for reasonable wear and tear;~~
- 14           ~~(b) refusal to make reasonable accommodations in rules, policies, practices, or services when the~~
- 15 ~~accommodations may be necessary to allow the person equal opportunity to use and enjoy a housing~~
- 16 ~~accommodation or property; or~~
- 17           ~~(c) (i) except as provided in subsection (5)(c)(ii), in connection with the design and construction~~
- 18 ~~of a covered multifamily housing accommodation, a failure to design and construct the housing~~
- 19 ~~accommodation in a manner that:~~
- 20           ~~(A) provides at least one accessible building entrance on an accessible route;~~
- 21           ~~(B) makes the public use and common use portions of the housing accommodation readily~~
- 22 ~~accessible to and usable by a person with a disability;~~
- 23           ~~(C) provides that all doors designed to allow passage into and within all premises within the~~
- 24 ~~housing accommodation are sufficiently wide to allow passage by a person with a disability who uses a~~
- 25 ~~wheelchair; and~~
- 26           ~~(D) ensures that all premises within the housing accommodation contain the following features of~~
- 27 ~~adaptive design:~~
- 28           ~~(i) an accessible route into and through the housing accommodation;~~
- 29           ~~(ii) light switches, electrical outlets, thermostats, and other environmental controls in accessible~~
- 30 ~~locations;~~



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

2 ~~(IV) usable kitchens and bathrooms that allow an individual who uses a wheelchair to maneuver~~  
3 ~~about the space;~~

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

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

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

9 and

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

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

15 ~~(b) For purposes of this subsection (7), the term "residential real estate related transaction" means~~  
16 ~~any of the following:~~

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

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

20 ~~(B) secured by residential real estate; or~~

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

22 ~~(8) It is an unlawful discriminatory practice to:~~

23 ~~(a) deny a person access to or membership or participation in:~~

24 ~~(i) a multiple listing service;~~

25 ~~(ii) a real estate brokers' organization; or~~

26 ~~(iii) any other service, organization, or facility relating to the business of selling, leasing, or renting~~  
27 ~~housing accommodations or property; or to~~

28 ~~(b) discriminate against the person referred to in subsection (8)(a) in the terms or conditions of~~  
29 ~~access, membership, or participation because of sex, marital status, race, creed, religion, age, familial~~  
30 ~~status, physical or mental disability, color, or national origin.~~

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

5           ~~(10) The prohibitions of this section against discrimination because of age and familial status do not~~  
 6 ~~extend to housing for older persons. "Housing for older persons" means housing:~~

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

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

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

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

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

20  
 21           **Section 7.** Section 49-2-501, MCA, is amended to read:

22           **"49-2-501. Filing complaints.** (1) A complaint may be filed WITH THE DEPARTMENT by or on  
 23 behalf of any person PARTY claiming to be aggrieved by any discriminatory practice prohibited by this  
 24 chapter.

25           (2) A COMPLAINT MAY BE FILED ON BEHALF OF A PARTY CLAIMING TO BE AGGRIEVED BY A  
 26 DISCRIMINATORY PRACTICE PROHIBITED BY THIS CHAPTER IF THE PERSON ACTING ON BEHALF OF  
 27 THE AGGRIEVED PARTY IS THE AGGRIEVED PARTY'S GUARDIAN, ATTORNEY, OR DULY AUTHORIZED  
 28 REPRESENTATIVE OR AN ADVOCACY GROUP, LABOR ORGANIZATION, OR OTHER ORGANIZATION  
 29 ACTING AS AN AUTHORIZED REPRESENTATIVE.

30           (3) The complaint must be in the form of a written, verified complaint stating the name and address

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

5 ~~(2)(4)~~ (a) Except as provided in 49-2-510 and subsection ~~(2)(b)~~ (4)(B) of this section, a complaint  
 6 under this chapter must be filed with the ~~commission~~ DEPARTMENT within 180 days after the alleged  
 7 unlawful discriminatory practice occurred or was discovered.

8 (b) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing  
 9 a grievance in accordance with any grievance procedure established by a collective bargaining agreement,  
 10 contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the  
 11 grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful  
 12 discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within  
 13 120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice  
 14 occurred or was discovered.

15 (c) Any complaint not filed within the times set forth ~~herein~~ in this section may not be considered  
 16 by the commission OR THE DEPARTMENT."

17

18 **Section 8.** Section 49-2-503, MCA, is amended to read:

19 "**49-2-503. Temporary relief by court order.** At any time after a complaint is filed under this  
 20 chapter, a district court may, upon the application of THE COMMISSIONER OR ~~the commission or the~~  
 21 complainant, enter a preliminary injunction against a respondent in the case. The procedure for granting the  
 22 order is as provided by statute for preliminary injunctions in civil actions."

23

24 **Section 9.** Section 49-2-504, MCA, is amended to read:

25 "**49-2-504. Informal ~~settlement~~ INVESTIGATION AND CONCILIATION.** (1) (A) The ~~commission~~  
 26 ~~staff~~ DEPARTMENT shall informally investigate the matters set out in ~~a filed~~ THE complaint promptly and  
 27 impartially. If the ~~staff~~ DEPARTMENT determines that the allegations are supported by ~~substantial a~~  
 28 preponderance of the evidence, it shall ~~immediately try to~~ ATTEMPT TO ACHIEVE A RESOLUTION OF THE  
 29 COMPLAINT BY CONFERENCE, CONCILIATION, AND PERSUASION THAT, IN ADDITION TO PROVIDING  
 30 REDRESS FOR THE COMPLAINT, INCLUDES CONDITIONS THAT eliminate the discriminatory practice by

1 ~~conference, conciliation, and persuasion, IF ANY, IDENTIFIED IN THE INVESTIGATION. The staff~~  
2 ~~DEPARTMENT shall, upon the first working day~~ WITHIN 10 BUSINESS DAYS following receipt of a filed  
3 ~~complaint, notify a potential respondent that the respondent is the subject of a filed complaint. The~~  
4 ~~notification must be in writing and must include a copy of the filed complaint, together with all documents~~  
5 ~~submitted to the commission or its staff with the complaint. IF REQUESTED, THE DEPARTMENT SHALL~~  
6 ~~ALSO PROVIDE THE PARTIES WITH ALL OTHER INFORMATION RELATED TO THE COMPLAINT IN THE~~  
7 ~~POSSESSION OF THE DEPARTMENT THAT IS NOT CURRENTLY IN THE POSSESSION OF THE PARTIES~~  
8 ~~OR A PARTY. THE DEPARTMENT SHALL MAKE KNOWN TO THE PARTIES THE FACT THAT~~  
9 ~~INFORMATION IS AVAILABLE UPON REQUEST. THE DEPARTMENT MAY NOT INVESTIGATE A~~  
10 ~~COMPLAINT UNTIL IT HAS RECEIVED NOTICE THAT THE RESPONDENT HAS RECEIVED THE~~  
11 ~~DEPARTMENT'S NOTIFICATION OF THE COMPLAINT.~~

12 (B) IF A COMPLAINT IS FILED RELATIVE TO AN EMPLOYMENT-RELATED COMPLAINT AND IF THE  
13 COMMISSIONER DECIDES THAT THE INCLUSION OF DOCUMENTS OR INFORMATION CONTAINED IN THE  
14 COMPLAINT WOULD SERIOUSLY IMPEDE THE RIGHTS OF A PERSON OR THE PROPER INVESTIGATION  
15 OF THE COMPLAINT, THE INFORMATION MAY BE EXCLUDED FROM THE NOTIFICATION BY PROVIDING  
16 A WRITTEN SUMMARY OF THE INFORMATION CONTAINED IN THE COMPLAINT. THE WRITTEN  
17 SUMMARY MUST INCLUDE SUFFICIENT INFORMATION TO GIVE MAXIMUM EFFECT TO THE INTENT OF  
18 THIS CHAPTER.

19 (2) THE RESPONDENT SHALL FILE AN ANSWER TO A COMPLAINT FILED WITH THE DEPARTMENT  
20 WITHIN 10 BUSINESS DAYS OF THE RESPONDENT'S RECEIPT OF THE COMPLAINT. AN ANSWER MAY  
21 BE A RESPONSE SIMPLY ADMITTING OR DENYING THE ALLEGATIONS WITHOUT FURTHER SPECIFICITY  
22 OR REQUESTING ADDITIONAL INFORMATION FROM THE DEPARTMENT. THE TIME FOR FILING AN  
23 ANSWER MAY BE EXTENDED BY A SHOWING OF GOOD CAUSE.

24 (3) THE DEPARTMENT SHALL COMMENCE PROCEEDINGS WITHIN 30 DAYS AFTER RECEIPT OF  
25 A COMPLAINT.

26 (4) THE DEPARTMENT SHALL MAKE A FINDING REGARDING THE MERIT OR NONMERIT OF THE  
27 COMPLAINT WITHIN 180 DAYS AFTER A COMPLAINT IS FILED, EXCEPT THAT THE DEPARTMENT SHALL  
28 MAKE THE FINDING WITHIN 120 DAYS AFTER A COMPLAINT IS FILED UNDER 49-2-305."

29

30 **Section 10.** Section 49-2-505, MCA, is amended to read:

1           "49-2-505. **Contested case hearing.** (1) If the informal efforts to eliminate the alleged  
2 discrimination are unsuccessful, the ~~staff~~ DEPARTMENT shall ~~inform the commission of the failure and the~~  
3 ~~commission shall cause written notice to be served, together with a copy of the complaint, requiring the~~  
4 ~~person, educational institution, financial institution, or governmental entity or agency charged in the~~  
5 ~~complaint to answer the allegations of the complaint at a hearing before the commission~~ HOLD A HEARING  
6 ON THE COMPLAINT. THE DEPARTMENT SHALL SERVE NOTICE OF THE HEARING AND A COPY OF THE  
7 COMPLAINT ON THE PARTIES.

8           (2) (A) IF THE PARTIES MUTUALLY AGREE TO PERMIT THE DEPARTMENT TO RETAIN  
9 JURISDICTION OF THE CASE UNDER THIS CHAPTER FOR A PERIOD OF TIME THAT EXCEEDS 12  
10 MONTHS AFTER THE COMPLAINT WAS FILED, THEN THE PARTIES SHALL STIPULATE TO A SCHEDULE  
11 FOR PROCEEDINGS TO BE ESTABLISHED BY THE DEPARTMENT.

12           (B) THE DEPARTMENT SHALL, NOT LATER THAN 395 DAYS AFTER THE COMPLAINT WAS  
13 FILED, SET A DATE FOR AN ADMINISTRATIVE HEARING IN THE CASE.

14           (C) THE CASE MUST BE HEARD NO LATER THAN 90 DAYS AFTER THE DATE IS SET BY THE  
15 DEPARTMENT. THE DEPARTMENT MAY, IN ITS SOLE DISCRETION, ISSUE A CONTINUANCE OF THE  
16 HEARING DATE ONLY UPON A SHOWING OF GOOD CAUSE.

17           ~~(2)(3)~~ (A) The hearing must be held by the ~~commission~~ DEPARTMENT in the county where the  
18 unlawful conduct is alleged to have occurred unless the ~~person, institution, entity, or agency~~ A PARTY  
19 charged in the complaint ~~or the commission~~ requests AND IS GRANTED a change of venue for good cause  
20 shown. The case in support of the complaint may be presented before the ~~commission~~ DEPARTMENT by  
21 the ~~staff~~, the complainant, or an attorney representing the complainant. The hearing and any subsequent  
22 proceedings under this chapter must be held in accordance with the APPLICABLE PORTIONS OF THE  
23 Montana ~~Administrative Procedure Act~~ except as provided in ~~49-2-508~~ Rules of Civil Procedure AS  
24 ADOPTED BY THE DEPARTMENT.

25           (B) UPON REQUEST OF THE HEARINGS OFFICER, THE DEPARTMENT MAY PRESENT EVIDENCE  
26 WITH REGARD TO ACTIVITY CONDUCTED. HOWEVER, EXCEPT IN CASES BROUGHT PURSUANT TO 42  
27 U.S.C. 3601, ET SEQ., THE DEPARTMENT MAY NOT REPRESENT EITHER PARTY IN A CONTESTED CASE  
28 HEARING.

29           (3) A PARTY MAY APPEAL A DECISION OF THE HEARINGS OFFICER TO THE COMMISSION. A  
30 PARTY SHALL PROVIDE NOTICE OF ITS APPEAL TO THE COMMISSION, THE DEPARTMENT, AND ALL

1 PARTIES WITHIN 10 BUSINESS DAYS OF RECEIPT OF THE NOTICE OF DECISION OF THE  
 2 ADMINISTRATIVE HEARING. THE COMMISSION SHALL HEAR ALL APPEALS WITHIN 120 DAYS OF  
 3 RECEIPT OF NOTICE OF APPEAL. THE COMMISSION SHALL RENDER A DECISION WITHIN 90 DAYS OF  
 4 HEARING THE APPEAL.

5 (4) ALL HEARINGS CONDUCTED UNDER THIS SECTION MAY, UPON STIPULATION OF THE  
 6 PARTIES, BE HEARD TELEPHONICALLY.

7 ~~(3)~~(5) The commission may make provisions for defraying the expenses of an indigent party in a  
 8 contested case hearing held pursuant to this chapter.

9 ~~(4)~~(6) The prevailing party in a hearing under this section may bring an action in district court for  
 10 ~~attorneys'~~ attorney fees. The court in its discretion may allow the prevailing party reasonable ~~attorneys'~~  
 11 attorney fees. An action under this section must comply with the Montana Rules of Civil Procedure."  
 12

13 **Section 11.** Section 49-2-506, MCA, is amended to read:

14 **"49-2-506. Procedure upon a finding of discrimination.** (1) If the commission OR THE  
 15 DEPARTMENT, AFTER A HEARING, finds that a ~~person, institution, entity, or agency~~ PARTY against whom  
 16 a complaint was filed has engaged in the discriminatory practice alleged in the complaint, the commission  
 17 OR THE DEPARTMENT shall order ~~him the person or it the institution, entity, or agency~~ PARTY to refrain  
 18 from engaging in the discriminatory conduct. The order may:

19 (a) prescribe conditions on the accused's future conduct relevant to the type of discriminatory  
 20 practice found;

21 (b) require any reasonable measure to correct the discriminatory practice and to rectify any harm,  
 22 pecuniary or otherwise, to the person discriminated against;

23 (c) require a report on the manner of compliance.

24 (2) ~~Except as provided in 49-2-510, the~~ EXCEPT AS PROVIDED IN 49-2-510, THE order may  
 25 not require the payment of ~~any~~ punitive damages.

26 (3) Whenever a commission OR DEPARTMENT order or conciliation agreement requires inspection  
 27 by the ~~commission staff~~ DEPARTMENT for a period of time to determine if the respondent is complying with  
 28 that order or agreement, the period of time may not be more than ~~3 years~~ 1 year."  
 29

30 **Section 12.** Section 49-2-508, MCA, is amended to read:

1           **"49-2-508. Enforcement of commission OR DEPARTMENT order OR CONCILIATION AGREEMENT.**

2 If the ~~commission's~~ order ISSUED UNDER 49-2-506 is not obeyed, ~~the commission staff or THE~~  
 3 COMMISSIONER OR a party may petition the district court in the county where the discriminatory practice  
 4 occurred or in which the respondent resides or transacts business to enforce the commission's OR  
 5 DEPARTMENT'S order by any appropriate order. THE COMMISSIONER OR A PARTY MAY ALSO  
 6 COMMENCE A CIVIL ACTION IN AN APPROPRIATE DISTRICT COURT FOR RELIEF FOR A BREACH OF A  
 7 CONCILIATION AGREEMENT."

8  
 9           **Section 13.** Section 49-2-509, MCA, is amended to read:

10           **"49-2-509. ~~Filing a Removal~~ CONCLUSION of complaint in to -- FILING IN district court.** (1) Except  
 11 as provided in subsection (2) ~~or with respect to complaints alleging a violation of 49-2-305~~, the ~~commission~~  
 12 ~~staff~~ DEPARTMENT shall, at the request of either party, ~~issue a letter entitling the complainant or the~~  
 13 ~~respondent to file remove a discrimination action in to district court~~ CONCLUDE THE ADMINISTRATIVE  
 14 PROCEEDINGS if:

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

16           (A) THE DEPARTMENT HAS COMPLETED ITS INVESTIGATION IN A COMPLAINT FILED PURSUANT  
 17 TO 49-2-305; OR

18           (B) 12 MONTHS HAVE ELAPSED SINCE THE COMPLAINT WAS FILED; ~~and~~

19           ~~(b) 12 months have elapsed since the complaint was filed.~~

20           (2) The ~~commission~~ DEPARTMENT staff may not refuse to ~~permit removal of a case to district court~~  
 21 CONCLUDE THE ADMINISTRATIVE PROCEEDINGS if unless:

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

24           ~~(b)(a)~~ the party requesting ~~removal~~ THE CONCLUSION OF THE ADMINISTRATIVE PROCEEDINGS  
 25 has waived the right to request ~~removal to~~ FILING IN the district court;

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

29           ~~(d)(c)~~ the party requesting ~~removal~~ CONCLUSION OF THE ADMINISTRATIVE PROCEEDINGS has  
 30 unsuccessfully attempted through court litigation to prevent the ~~commission staff~~ DEPARTMENT from

1 investigating the complaint.

2 (3) The ~~commission~~ DEPARTMENT ~~staff may~~ shall dismiss a complaint filed under ~~49-2-504~~ this  
3 chapter and ~~allow~~ the complainant ~~to~~ may file a discrimination action in district court if:

4 (a) the ~~commission~~ OR THE DEPARTMENT ~~staff determines that the commission~~ lacks jurisdiction  
5 over the complaint;

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

8 (c) the ~~commission~~ DEPARTMENT ~~staff~~ determines that the allegations of the complaint are not  
9 supported by ~~substantial~~ A PREPONDERANCE OF THE evidence; OR

10 (D) THE DEPARTMENT DETERMINES THAT THE COMMISSION OR THE DEPARTMENT WILL NOT  
11 OR CANNOT HOLD A HEARING WITHIN 12 MONTHS AFTER THE FILING OF THE COMPLAINT.

12 (4) A decision of the ~~commission~~ DEPARTMENT ~~staff~~ to dismiss a complaint brought under this  
13 chapter or to refuse to permit removal to the district court is final unless a party seeks review by filing  
14 objections within 14 days after the decision is served on ~~him~~ the party. The commission shall review the  
15 decision in informal proceedings under 2-4-604, ~~except that 2-4-604(5) applies only to review of a refusal~~  
16 ~~to permit removal.~~ A party may ask the district court to review a decision of the commission made under  
17 this part SECTION. The review must be de novo.

18 (5) Within 90 days after receipt of a notice of ~~dismissal~~ under subsection (1) OR (3) or an order  
19 under subsection (4) of affirmance of a dismissal, whichever occurs later, or of a letter issued under  
20 subsection (1), the complainant may ~~petition~~ COMMENCE A CIVIL ACTION IN the district court in the  
21 district in which the alleged violation occurred for appropriate relief. Except as provided in 49-2-510, if the  
22 ~~claimant~~ COMPLAINANT fails to ~~petition~~ COMMENCE A CIVIL ACTION IN the district court within 90 days  
23 after receipt of the letter, notice, or order issued by the commission ~~staff~~ OR THE DEPARTMENT, the claim  
24 ~~shall be~~ is barred.

25 (6) If the district court finds, in an action under this section, that a person, institution, entity, or  
26 agency against whom or which a complaint was filed has engaged in the unlawful discriminatory practice  
27 alleged in the complaint, the court may provide the same relief as described in 49-2-506 for a commission  
28 order. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees.

29 (7) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged  
30 violation of CHAPTER 3 OR this chapter, including acts that may otherwise also constitute a violation of



1 the discrimination provisions of Article II, section 4, of the Montana constitution or 49-1-102. ~~No other~~  
 2 ~~Another~~ A claim or request for relief based upon ~~such~~ the acts may not be entertained by a district court  
 3 other than by the procedures specified in this chapter."  
 4

5 **Section 14.** Section 49-2-510, MCA, is amended to read:

6 **"49-2-510. Procedures and remedies for enforcement of housing discrimination laws.** (1) A  
 7 complaint may be filed with the ~~commission~~ DEPARTMENT by ~~or on behalf of~~ OR ON BEHALF OF a person  
 8 PARTY claiming to be aggrieved by any discriminatory practice prohibited by 49-2-305. The complaint must  
 9 be in written form, VERIFIED BY THE AGGRIEVED PARTY, and must be filed with the ~~commission~~  
 10 DEPARTMENT within ~~4-year 90~~ 180 days after the alleged unlawful discriminatory practice occurred or was  
 11 discovered.

12 (2) ~~(a) Except as provided in subsection (2)(b), if~~ If the DEPARTMENT, ON APPEAL, OR THE  
 13 ~~commission,~~ in a hearing under 49-2-505, finds that a ~~person, institution, entity, or agency~~ PARTY against  
 14 whom a complaint was filed under this part has engaged in a discriminatory practice in violation of  
 15 49-2-305, the DEPARTMENT OR THE commission may, in addition to the remedies and injunctive and other  
 16 equitable relief provided by 49-2-506, ~~to vindicate the public interest,~~ TO VINDICATE THE PUBLIC  
 17 INTEREST, assess a civil penalty ~~pursuant to the statutes governing the award of punitive damages in this~~  
 18 state:

19 ~~(i)(a)~~ (a) in an amount not exceeding \$10,000 if the respondent has not been ~~found~~ adjudged in any  
 20 prior judicial or formal administrative proceeding to have committed any prior discriminatory housing  
 21 practice in violation of 49-2-305; and

22 ~~(ii)(b)~~ (b) in an amount not exceeding \$25,000 if the respondent has been ~~found~~ adjudged in any prior  
 23 judicial or formal administrative proceedings to have committed one ~~other~~ or more similar discriminatory  
 24 housing ~~practice~~ practices in repeated violation of a subsection of 49-2-305 during the 5-year period ending  
 25 on the date of the filing of the written complaint; and

26 ~~(iii)~~ (c) in an amount not exceeding \$50,000 if the respondent has been ~~found~~ to have committed two  
 27 ~~or more discriminatory housing practices~~ in violation of 49-2-305 during the 7-year period ending on the  
 28 ~~date of the filing of the complaint.~~

29 ~~(b)~~ (b) If the acts constituting the discriminatory housing practice that is the object of the complaint  
 30 ~~are committed by the same natural person who has been previously found to have committed acts~~

1 ~~constituting a discriminatory housing practice, the civil penalties provided in subsections (2)(a)(iii) and~~  
 2 ~~(2)(a)(iii) may be imposed without regard to the period of time within which any prior discriminatory housing~~  
 3 ~~practice occurred.~~

4 (3) In the case of an order with respect to a discriminatory housing practice in violation of  
 5 49-2-305 that occurred in the course of a business subject to licensing or regulation by a governmental  
 6 agency, the commission shall, no later than 30 days after the date of the issuance of the order or, if the  
 7 order is judicially reviewed, no later than 30 days after the order is ~~in substance~~ affirmed:

8 (a) send copies of the findings of fact, the conclusions of law, and the order to the licensing or  
 9 regulatory agency; ~~and~~

10 (b) ~~recommend to the licensing or regulatory agency appropriate disciplinary action, including,~~  
 11 ~~where appropriate, the suspension or revocation of the licence of the respondent.~~

12 (4) (a) When a complaint is filed under 49-2-305, a complainant, or a respondent, or aggrieved  
 13 ~~person on whose behalf the complaint was filed~~ may elect to have the claims decided in a civil action in  
 14 lieu of a hearing under 49-2-505. The election must be made no later than 20 days after receipt by the  
 15 electing person of service of notice of certification for hearing under 49-2-505. The person making the  
 16 election shall give notice to the ~~commission~~ DEPARTMENT and to all ~~other~~ complainants and OTHER  
 17 ~~respondents to whom the complaint relates~~ named in the complaint. Within 30 days after the election is  
 18 made, the ~~commission~~ complainant, THE COMMISSIONER, OR THE AGGRIEVED PARTY shall MAY  
 19 commence a civil action in an appropriate district court ~~on behalf of the aggrieved person if the commission~~  
 20 ~~staff has made a finding that the allegations of the complaint are supported by substantial evidence. If the~~  
 21 ~~commission staff has made a finding that the allegations of the complaint are not supported by substantial~~  
 22 ~~evidence, the complainant may commence a civil action in an appropriate district court in accordance with~~  
 23 ~~subsection (5). An aggrieved person with respect to the issues to be determined in a civil action brought~~  
 24 ~~by the commission staff may intervene in the action~~ ON BEHALF OF THE AGGRIEVED PARTY IF THE  
 25 DEPARTMENT HAS MADE A FINDING THAT THE ALLEGATIONS OF THE COMPLAINT ARE SUPPORTED  
 26 BY A PREPONDERANCE OF THE EVIDENCE. IF THE DEPARTMENT HAS MADE A FINDING THAT THE  
 27 ALLEGATIONS OF THE COMPLAINT ARE NOT SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE,  
 28 THE COMPLAINANT MAY COMMENCE A CIVIL ACTION IN AN APPROPRIATE DISTRICT COURT IN  
 29 ACCORDANCE WITH SUBSECTION (5). AN AGGRIEVED PARTY WITH RESPECT TO THE ISSUES TO BE  
 30 DETERMINED IN A CIVIL ACTION BROUGHT BY THE DEPARTMENT MAY INTERVENE IN THE ACTION.

1 (b) The ~~commission~~ DEPARTMENT may not continue administrative proceedings on a complaint  
2 after an election is made in accordance with subsection (4)(a).

3 (5) (a) An aggrieved ~~person~~ PARTY may commence a civil action in an appropriate district court  
4 within 2 years after an alleged unlawful discriminatory practice under 49-2-305 occurred or was discovered  
5 or within 2 years of the breach of a conciliation agreement entered into under 49-2-504 in a case alleging  
6 a violation of 49-2-305. The computation of the 2-year period does not include any time during which an  
7 administrative proceeding under this title was pending with respect to a complaint alleging a violation of  
8 49-2-305. The tolling of the time limit for commencing a civil action does not apply to actions arising from  
9 breach of a conciliation agreement.

10 (b) An aggrieved ~~person~~ PARTY may commence a civil action under this subsection for a violation  
11 of 49-2-305 whether or not a complaint has been filed under 49-2-501 and without regard to the status  
12 of a complaint filed with the ~~commission~~ DEPARTMENT except as provided in subsection (5)(d). If the  
13 ~~commission~~ DEPARTMENT has obtained a conciliation agreement with the consent of the aggrieved ~~person~~  
14 PARTY, an action may not be filed under this subsection by the aggrieved ~~person~~ PARTY regarding the  
15 alleged violation of 49-2-305 that forms the basis for the complaint except for the purpose of enforcing the  
16 terms of the agreement.

17 (c) The commission OR THE DEPARTMENT may not continue administrative proceedings on a  
18 complaint after the ~~beginning of a trial~~ FILING of a civil action commenced by the aggrieved party under  
19 this subsection (5) seeking relief with respect to the same alleged violation of 49-2-305.

20 (d) An aggrieved ~~person~~ PARTY may not commence a civil action under this subsection (5) with  
21 respect to an alleged violation of 49-2-305 if the commission OR THE DEPARTMENT has commenced a  
22 hearing on the record under 49-2-505 regarding the same complaint.

23 (e) Upon application by a person alleging a violation of 49-2-305 in a civil action under this  
24 subsection (5) or by a person against whom the violation is alleged, the court may:

25 (i) appoint an attorney for the applicant and the respondent; or

26 (ii) authorize the commencement or continuation of a civil action without the payment of fees,  
27 costs, or security if, in the opinion of the court, the ~~applicant party~~ applicant party is financially unable to bear the costs  
28 of the civil action. As in all actions brought in forma pauperis, the burden of showing lack of financial ability  
29 rests with the party claiming financial hardship.

30 (f) ~~Upon timely application, the commission may intervene in a civil action brought under this~~

1 ~~subsection (6) if the commission certifies that the case is of general public importance. Upon intervention,~~  
 2 ~~the commission may obtain the same relief that would be available to the commission under subsection (7).~~

3 (6) If the court finds that a ~~person, institution, entity, or agency~~ PARTY against whom a complaint  
 4 was filed under this section has been adjudicated in a civil or formal administrative proceeding to have  
 5 engaged in a similar discriminatory practice in violation of a subsection of 49-2-305, the court may, ~~in~~  
 6 ~~addition to the other remedies and injunctive and other equitable relief provided under 49-2-506~~ consistent  
 7 with the provisions of subsection (2), award ~~punitive additional~~ PUNITIVE damages. The court may also  
 8 award attorney fees to the substantively prevailing party.

9 ~~(7) (a) Whenever the commission has reasonable cause to believe that a person or group of persons~~  
 10 ~~is engaged in a pattern or practice in violation of 49-2-305 or that a group of persons has been~~  
 11 ~~discriminated against in violation of 49-2-305 and the denial raises an issue of general public importance,~~  
 12 ~~the commission may commence a civil action in an appropriate district court. The commission may also~~  
 13 ~~commence a civil action in any appropriate district court for relief regarding breach of a conciliation~~  
 14 ~~agreement in a case regarding an alleged violation of 49-2-305 if the commission is a party to the~~  
 15 ~~agreement.~~

16 ~~(b) The commission may file a civil action under this subsection (7) within 18 months after the~~  
 17 ~~alleged breach of the conciliation agreement or unlawful discriminatory practice occurred or was discovered.~~

18 ~~(c) In a civil action under this subsection (7), the court may, in addition to the remedies provided~~  
 19 ~~under 49-2-506, assess a civil penalty against the respondent:~~

20 ~~(i) in an amount not exceeding \$50,000 for a first violation; and~~

21 ~~(ii) in an amount not exceeding \$100,000 for any subsequent violation.~~

22 ~~(d) Upon timely application, a person may intervene in a civil action under this subsection (7) that~~  
 23 ~~involves an alleged violation of 49-2-305 with respect to which the intervenor is an aggrieved person.~~

24 ~~(8)(7) (A) Civil ~~AND~~ EXCEPT AS PROVIDED IN SUBSECTION (7)(B), ALL civil and administrative~~  
 25 ~~penalties and other revenue generated under this section must be paid to the state treasurer to be deposited~~  
 26 ~~in an account in the state special revenue fund to be used by the commission for housing discrimination~~  
 27 ~~enforcement part must be deposited into the state's general fund.~~

28 (B) DAMAGES OR PENALTIES, WHETHER MONETARY OR OTHERWISE, MAY NOT INURE TO AN  
 29 ORGANIZATION UNLESS THE ORGANIZATION IS AN AGGRIEVED PARTY. THIS SECTION DOES NOT  
 30 AFFECT ANY AMOUNT OWED TO AN AGGRIEVED PARTY."

1 ~~Section 14. Section 49-2-601, MCA, is amended to read:~~

2 ~~"49-2-601. Criminal penalty. A (1) Except as provided in subsection (2), a person, who or an~~  
 3 ~~educational institution, or financial institution, either public or private, or a governmental entity or agency~~  
 4 ~~who or which that willfully engages in an unlawful discriminatory practice prohibited by this chapter or~~  
 5 ~~willfully resists, prevents, impedes, or interferes with the commission, the department, or any of its~~  
 6 ~~authorized representatives in the performance of a duty under this chapter or who or which willfully violates~~  
 7 ~~an order of the commission or willfully violates this chapter in any other manner is guilty of a misdemeanor~~  
 8 ~~and is punishable by a fine of not more than \$500 or by imprisonment for not more than 6 months, or both.~~

9 ~~(2) A person may not be subject to any penalty under this section if the person acts in a manner~~  
 10 ~~consistent with the protection of the person's rights to avoid criminal or civil self incrimination."~~

11  
 12 NEW SECTION. SECTION 15. ENFORCEMENT. (1) WHEN A POSSIBLE VIOLATION OF THIS  
 13 CHAPTER COMES TO THE ATTENTION OF THE DEPARTMENT, THE COMMISSIONER MAY INITIATE A  
 14 COMPLAINT ON BEHALF OF THE DEPARTMENT. THE COMPLAINT MUST BE SIGNED BY THE  
 15 COMMISSIONER.

16 (2) A PERSON IS NOT SUBJECT TO PENALTIES UNDER THIS CHAPTER IF COMPLIANCE WITH  
 17 THE PROVISIONS OF THIS CHAPTER WOULD CAUSE THE PERSON TO VIOLATE THE PROVISIONS OF  
 18 ANOTHER STATE LAW.

19  
 20 NEW SECTION. SECTION 16. ENFORCEMENT AND REMEDIES. THE PROCEDURES SET FORTH  
 21 IN CHAPTER 2, PART 5, APPLY TO COMPLAINTS ALLEGING A VIOLATION OF THIS CHAPTER.

22  
 23 NEW SECTION. SECTION 17. STAFF TRANSFER. THE STAFF OF THE COMMISSION IS  
 24 TRANSFERRED TO THE DEPARTMENT. THE STAFF IS UNDER THE DIRECTION AND CONTROL OF THE  
 25 COMMISSIONER OF LABOR AND INDUSTRY. THE STAFF SHALL PERFORM FUNCTIONS AS DIRECTED  
 26 AND IN ACCORDANCE WITH THE EXPRESS AND IMPLIED PURPOSES OF [THIS ACT]. THE TRANSFER  
 27 OF STAFF IS SUBJECT TO 2-15-131 THROUGH 2-15-137.

28  
 29 NEW SECTION. SECTION 18. REPEALER. SECTIONS 49-2-201, 49-2-502, 49-3-304, 49-3-305,  
 30 49-3-306, 49-3-307, 49-3-308, 49-3-309, 49-3-310, 49-3-311, AND 49-3-312, MCA, ARE REPEALED.

