

HOUSE BILL NO. 95

INTRODUCED BY W. MCNUTT

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING HUMAN RIGHTS LAW; CLARIFYING THE SUBPOENA POWER OF THE DEPARTMENT OF LABOR AND INDUSTRY AND THE COMMISSIONER OF LABOR AND INDUSTRY; AUTHORIZING AN INDIAN EMPLOYMENT PREFERENCE ON OR NEAR RESERVATIONS; DELETING THE UNDEFINED TERM "ADAPTIVE DESIGN" WITH RESPECT TO HOUSING DISCRIMINATION; EXTENDING DEADLINES FOR ADMINISTRATIVE ACTION IF THE PARTIES AGREE TO MEDIATION; AMENDING SECTIONS 49-2-203, 49-2-303, 49-2-305, 49-2-403, AND 49-2-504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 49-2-203, MCA, is amended to read:

"49-2-203. Subpoena power of department and commissioner. (1) The ~~commission~~ department may subpoena witnesses issue subpoenas, take the testimony of any person under oath, administer oaths, and, in connection therewith, require for the purpose of examination the production for examination of books, papers, or other tangible evidence relating to a matter in question before the ~~commission~~ complaint of discrimination filed under this chapter.

(2) The department's staff may request that a subpoena relating to a matter under investigation be issued by the commissioner or the commissioner's authorized representative. The authorized representative may not be involved in enforcement of human rights. The commissioner may subpoena witnesses, take testimony under oath, administer oaths, and require the production, for examination, of books, papers, or other ~~intangible~~ tangible evidence for examination relating to the matter under investigation.

~~(3) A party may request subpoenas from the commissioner for the purposes provided in subsection (2).~~

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

Section 2. Section 49-2-303, MCA, is amended to read:



1 **"49-2-303. Discrimination in employment.** (1) It is an unlawful discriminatory practice for:

2 (a) an employer to refuse employment to a person, to bar a person from employment, or to discriminate
3 against a person in compensation or in a term, condition, or privilege of employment because of race, creed,
4 religion, color, or national origin or because of age, physical or mental disability, marital status, or sex when the
5 reasonable demands of the position do not require an age, physical or mental disability, marital status, or sex
6 distinction;

7 (b) a labor organization or joint labor management committee controlling apprenticeship to exclude or
8 expel any person from its membership or from an apprenticeship or training program or to discriminate in any way
9 against a member of or an applicant to the labor organization or an employer or employee because of race,
10 creed, religion, color, or national origin or because of age, physical or mental disability, marital status, or sex
11 when the reasonable demands of the program do not require an age, physical or mental disability, marital status,
12 or sex distinction;

13 (c) an employer or employment agency to print or circulate or cause to be printed or circulated a
14 statement, advertisement, or publication or to use an employment application that expresses, directly or indirectly,
15 a limitation, specification, or discrimination as to sex, marital status, age, physical or mental disability, race, creed,
16 religion, color, or national origin or an intent to make the limitation, unless based upon a bona fide occupational
17 qualification;

18 (d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to
19 discriminate against any individual because of sex, marital status, age, physical or mental disability, race, creed,
20 religion, color, or national origin, unless based upon a bona fide occupational qualification.

21 (2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications must be
22 strictly construed.

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

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

27 (5) It is not a violation of the prohibition against marital status discrimination in this section:

28 (a) for an employer or labor organization to provide greater or additional contributions to a bona fide
29 group insurance plan for employees with dependents than to those employees without dependents or with fewer
30 dependents; or

1 (b) for an employer to employ or offer to employ a person who is qualified for the position and to also
2 employ or offer to employ the person's spouse.

3 (6) The provisions of this chapter do not apply to a business or enterprise on or near an Indian
4 reservation with respect to any publicly announced employment practice of the business or enterprise under
5 which preferential treatment may be given to an individual based on the individual's status as an Indian living on
6 or near a reservation."

7

8 **Section 3.** Section 49-2-305, MCA, is amended to read:

9 **"49-2-305. Discrimination in housing -- exemptions.** (1) It is an unlawful discriminatory practice for
10 the owner, ~~lessee~~ lessor, or manager having the right to sell, lease, or rent a housing accommodation or improved
11 or unimproved property or for any other person:

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

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

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

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

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

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

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

4 (3) It is an unlawful discriminatory practice to make, print, or publish or cause to be made, printed, or
5 published any notice, statement, or advertisement that indicates any preference, limitation, or discrimination that
6 is prohibited by subsection (1) or any intention to make or have a prohibited preference, limitation, or
7 discrimination.

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

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

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

14 or

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

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

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

24 (b) refusal to make reasonable accommodations in rules, policies, practices, or services when the
25 accommodations may be necessary to allow the person equal opportunity to use and enjoy a housing
26 accommodation or property; or

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

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

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

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

5 (D) ensures that all premises within the housing accommodation contain the following features of
6 ~~adaptive design~~:

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

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

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

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

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

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

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

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

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

22 (b) For purposes of this subsection (7), the term "residential real estate-related transaction" means any
23 of the following:

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

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

27 (B) secured by residential real estate; or

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

29 (8) It is an unlawful discriminatory practice to deny a person access to or membership or participation
30 in a multiple-listing service; real estate brokers' organization; or other service, organization, or facility relating to

1 the business of selling, leasing, or renting housing accommodations or property or to discriminate against the
2 person in the terms or conditions of access, membership, or participation because of sex, marital status, race,
3 creed, religion, age, familial status, physical or mental disability, color, or national origin.

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

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

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

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

12 (c) intended and operated for occupancy by at least one person 55 years of age or older per unit in
13 accordance with the provisions of 42 U.S.C. 3607(b)(2)(C) and (b)(3) through (b)(5), as those provisions read
14 on March 31, 1996.

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

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

22

23 **Section 4.** Section 49-2-403, MCA, is amended to read:

24 **"49-2-403. Specific limits on justification.** (1) Except as permitted in 49-2-303(3) through ~~(5)~~ (6) and
25 49-3-201(5), sex, marital status, age, physical or mental disability, race, creed, religion, color, or national origin
26 may not comprise justification for discrimination except for the legally demonstrable purpose of correcting a
27 previous discriminatory practice.

28 (2) Age or mental disability may represent a legitimate discriminatory criterion in credit transactions only
29 as it relates to a person's capacity to make or be bound by contracts or other obligations."

30

1 **Section 5.** Section 49-2-504, MCA, is amended to read:

2 **"49-2-504. Informal investigation -- conciliation -- findings.** (1) The department shall informally
3 investigate the matters set out in the complaint promptly and impartially to determine whether there is reasonable
4 cause to believe that the allegations are supported by a preponderance of the evidence.

5 (2) (a) During the informal investigation process and before the department issues a finding under
6 subsection (7), the department may attempt to resolve the complaint by mediation.

7 **(b) If the parties to the complaint voluntarily agree to enter into the mediation process, the time period**
8 **for the department to complete the ~~formal~~ INFORMAL investigation and issue a finding under subsection (7) may**
9 **be extended up to 45 days. An agreement to enter into mediation serves to extend the time for hearing beyond**
10 **12 months as provided for in 49-2-505(2).**

11 **(b)(c)** If the department makes a finding under subsection (7)(c) that there is reasonable cause to believe
12 that unlawful discrimination occurred, the department shall attempt to resolve the complaint by conciliation in a
13 manner that, in addition to providing redress for the complaint, includes conditions that eliminate the
14 discriminatory practice, if any, found in the investigation.

15 (3) The department shall, within 10 business days following receipt of a filed complaint, notify a
16 respondent that the respondent is the subject of a filed complaint. The notification must be in writing and must
17 include a copy of the filed complaint. If requested, the department shall also provide the parties with all other
18 information related to the complaint in the possession of the department that is not currently in the possession
19 of the parties or a party. The department shall make known to the parties the fact that information is available
20 upon request. The department may not investigate a complaint until it has received notice that the respondent
21 has received the department's notification of the complaint.

22 (4) If the department determines that the inclusion of documents or information obtained by the
23 department would seriously impede the rights of a person or the proper investigation of the complaint, the
24 information may be excluded from the notification by providing a written summary of the information. The written
25 summary must include sufficient information to give maximum effect to the intent of this chapter.

26 (5) The respondent shall file an answer to a complaint filed with the department within 10 business days
27 of the respondent's receipt of the complaint. An answer may be a response simply admitting or denying the
28 allegations without further specificity or requesting additional information from the department. The time for filing
29 an answer may be extended by a showing of good cause.

30 (6) The department shall commence proceedings within 30 days after receipt of a complaint.

1 (7) (a) After the informal investigation, the department shall issue a finding on whether there is
2 reasonable cause to believe that a preponderance of the evidence supports the charging party's allegation of
3 unlawful discrimination. ~~The~~ Unless the time period is extended as provided in subsection (2)(b), the finding must
4 be issued within 180 days after a complaint is filed, except that the department shall issue the finding within 120
5 days after a complaint is filed under 49-2-305.

6 (b) If the department finds that there is no reasonable cause to believe that unlawful discrimination
7 occurred, it shall issue a notice of dismissal and dismiss the case from the department's administrative process.
8 After receipt of a notice of dismissal, a charging party may:

9 (i) continue the administrative process by filing objections with the commission as provided in 49-2-511;
10 or

11 (ii) discontinue the administrative process and commence proceedings in district court as provided in
12 49-2-511.

13 (c) If the department finds that there is reasonable cause to believe that unlawful discrimination occurred
14 and conciliation efforts are unsuccessful, the department shall certify the complaint for hearing pursuant to
15 49-2-505."

16

17 NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

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