

1 _____ BILL NO. _____

2 INTRODUCED BY _____
 3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING MONTANA'S FAIR HOUSING LAWS; CHANGING THE
 5 STANDING REQUIREMENTS FOR BRINGING A DISCRIMINATION COMPLAINT; ALLOWING THE
 6 DEPARTMENT OF LABOR AND INDUSTRY TO FILE A COMPLAINT ON BEHALF OF ANOTHER PERSON
 7 IN RELATION TO HOUSING DISCRIMINATION; CHANGING THE STANDARD OF PROOF IN
 8 DISCRIMINATION CASES FROM A PREPONDERANCE OF THE EVIDENCE TO SUBSTANTIAL EVIDENCE;
 9 SHORTENING THE TIME FOR COMPLETION OF AN INVESTIGATION IN HOUSING DISCRIMINATION
 10 CASES FROM 120 DAYS TO 100 DAYS; EXTENDING THE TIME FOR FILING HOUSING COMPLAINTS
 11 FROM 180 DAYS TO 1 YEAR; CLARIFYING THE TIMEFRAMES FOR CONDUCTING HEARINGS AND
 12 CONCLUDING ADMINISTRATIVE PROCEEDINGS; REVISING CONTESTED CASE HEARING PROCEDURES
 13 FOR HOUSING DISCRIMINATION CASES; REVISING CIVIL PENALTIES FOR HOUSING DISCRIMINATION
 14 VIOLATIONS; AND AMENDING SECTIONS 49-2-101, 49-2-204, 49-2-501, 49-2-504, 49-2-505,
 15 49-2-509, AND 49-2-510, MCA."

16

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

18

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

20 **"49-2-101. Definitions.** As used in this chapter, unless the context requires otherwise, the
 21 following definitions apply:

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

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

28 ~~(3)~~(2) "Commission" means the commission for human rights provided for in 2-15-1706.

29 ~~(4)~~(3) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

30 ~~(5)~~(4) "Credit" means the right granted by a creditor to a person to defer payment of a debt, to

1 incur debt and defer its payment, or to purchase property or services and defer payment. It includes
2 without limitation the right to incur and defer debt that is secured by residential real property.

3 ~~(6)~~(5) "Credit transaction" means any invitation to apply for credit, application for credit, extension
4 of credit, or credit sale.

5 ~~(7)~~(6) "Creditor" means a person who, regularly or as a part of the person's business, arranges
6 for the extension of credit for which the payment of a financial charge or interest is required, whether in
7 connection with loans, sale of property or services, or otherwise.

8 ~~(8)~~(7) "Department" means the department of labor and industry provided for in 2-15-1701.

9 ~~(9)~~(8) "Educational institution" means a public or private institution and includes an academy;
10 college; elementary or secondary school; extension course; kindergarten; nursery; school system;
11 university; business, nursing, professional, secretarial, technical, or vocational school; or agent of an
12 educational institution.

13 ~~(10)~~(9) "Employee" means an individual employed by an employer.

14 ~~(11)~~(10) "Employer" means an employer of one or more persons or an agent of the employer but
15 does not include a fraternal, charitable, or religious association or corporation if the association or
16 corporation is not organized either for private profit or to provide accommodations or services that are
17 available on a nonmembership basis.

18 ~~(12)~~(11) "Employment agency" means a person undertaking to procure employees or opportunities
19 to work.

20 ~~(13)~~(12) "Financial institution" means a commercial bank, trust company, savings bank, finance
21 company, savings and loan association, credit union, investment company, or insurance company.

22 ~~(14)~~(13) "Housing accommodation" means a building or portion of a building, whether constructed
23 or to be constructed, that is or will be used as the sleeping quarters of its occupants.

24 ~~(15)~~(14) "Labor organization" means an organization or an agent of an organization organized for
25 the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances
26 or terms or conditions of employment, or of other mutual aid and protection of employees.

27 ~~(16)~~(15) "National origin" means ancestry.

28 ~~(17)~~(16) (a) "Organization" means a corporation, association, or any other legal or commercial
29 entity that engages in advocacy of, enforcement of, or compliance with legal interests affected by this
30 chapter.

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

2 ~~(18)~~(17) "Person" means one or more individuals, labor unions, partnerships, associations,
3 corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated
4 employees' associations, employers, employment agencies, organizations, or labor organizations.

5 ~~(19)~~(18) (a) "Physical or mental disability" means:

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

8 (ii) a record of ~~such an~~ the impairment; or

9 (iii) a condition regarded as ~~such an~~ impairment under this subsection (18)(a).

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

14 ~~(20)~~(19) (a) "Public accommodation" means a place that caters or offers its services, goods, or
15 facilities to the general public subject only to the conditions and limitations established by law and
16 applicable to all persons. It includes without limitation a public inn, restaurant, eating house, hotel,
17 roadhouse, place where food or alcoholic beverages or malt liquors are sold for consumption, motel, soda
18 fountain, soft drink parlor, tavern, nightclub, trailer park, resort, campground, barbershop, beauty parlor,
19 bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor,
20 transportation company, or hospital and all other public amusement and business establishments.

21 (b) Public accommodation does not include an institution, club, or place of accommodation that
22 proves that it is by its nature distinctly private. An institution, club, or place of accommodation may not
23 be considered by its nature distinctly private if it has more than 100 members, provides regular meal
24 service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or
25 beverages, directly or indirectly, from or on behalf of nonmembers, for the furtherance of trade or
26 business. For the purposes of this subsection ~~(20)~~ (19), any lodge of a recognized national fraternal
27 organization is considered by its nature distinctly private."

28

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

30 **"49-2-204. Rules.** (1) The commission shall adopt procedural and substantive rules necessary to

1 implement the commission's responsibilities under this chapter. Rulemaking procedures must comply with
2 the requirements of the Montana Administrative Procedure Act. At a minimum, the commission shall adopt
3 as part of its procedural rules all applicable portions of the Montana Rules of Civil Procedure and the
4 Montana Rules of Evidence. The commission may adopt the procedural provisions of Title 46 as it
5 considers appropriate.

6 (2) The department shall adopt procedural and substantive rules necessary to implement the
7 department's responsibilities under this chapter. Rules adopted under this chapter must comply with the
8 Montana Administrative Procedure Act. For contested case hearings conducted pursuant to 49-2-505 or
9 49-2-510, the department shall adopt all applicable portions of the Montana Rules of Civil Procedure and
10 the Montana Rules of Evidence."

11

12 **Section 3.** Section 49-2-501, MCA, is amended to read:

13 **"49-2-501. Filing complaints.** (1) A complaint may be filed with the department by any ~~party~~
14 person claiming to be aggrieved by any discriminatory practice prohibited by this chapter.

15 (2) A complaint may be filed on behalf of a ~~party~~ person claiming to be aggrieved by a
16 discriminatory practice prohibited by this chapter if the person acting on behalf of the aggrieved ~~party~~
17 person is the aggrieved ~~party's~~ person's guardian, attorney, or duly authorized representative or an
18 advocacy group, labor organization, or other organization acting as an authorized representative.

19 (3) The complaint must be in the form of a written, verified complaint stating the name and address
20 of the ~~party~~ person, educational institution, financial institution, or governmental entity or agency alleged
21 to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice.

22 (4) (a) Except as provided in 49-2-510 and subsection (4)(b) of this section, a complaint under
23 this chapter must be filed with the department within 180 days after the alleged unlawful discriminatory
24 practice occurred or was discovered.

25 (b) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing
26 a grievance in accordance with any grievance procedure established by a collective bargaining agreement,
27 contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the
28 grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful
29 discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within
30 120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice

1 occurred or was discovered.

2 (c) Any complaint not filed within the times set forth in this section may not be considered by the
3 commission or the department."

4

5 **Section 4.** Section 49-2-504, MCA, is amended to read:

6 **"49-2-504. Informal investigation and conciliation.** (1) (a) The department shall informally
7 investigate the matters set out in the complaint promptly and impartially. If the department determines that
8 the allegations are supported by a ~~preponderance of the~~ substantial evidence, it shall attempt to achieve
9 a resolution of the complaint by conference, conciliation, and persuasion that, in addition to providing
10 redress for the complaint, includes conditions that eliminate the discriminatory practice, if any, identified
11 in the investigation. The department shall, within 10 business days following receipt of a filed complaint,
12 notify a respondent that the respondent is the subject of a filed complaint. The notification must be in
13 writing and must include a copy of the filed complaint. ~~¶~~ Except as provided in subsection (1)(b), if
14 requested, the department shall also provide the parties with all other information related to the complaint
15 in the possession of the department that is not currently in the possession of the parties or a party. The
16 department shall make known to the parties the fact that information is available upon request. ~~The~~
17 ~~department may not investigate a complaint until it has received notice that the respondent has received~~
18 ~~the department's notification of the complaint.~~

19 (b) ~~If a complaint is filed relative to an employment-related complaint and if the commissioner~~
20 ~~decides that the inclusion of documents or information contained in the complaint would seriously impede~~
21 ~~the rights of a person or the proper investigation of the complaint, the information may be excluded from~~
22 ~~the notification by providing a written summary of the information contained in the complaint. The written~~
23 ~~summary must include sufficient information to give maximum effect to the intent of this chapter.~~

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

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

29 (4) ~~The~~ In cases alleging a violation of 49-2-305, the department shall complete its investigation
30 and make a finding regarding the merit or nonmerit of the complaint of whether the complaint is supported

1 by substantial evidence within ~~180~~ 100 days after a complaint is filed, ~~except that the department shall~~
 2 ~~make the finding within 120 days after a complaint is filed under 49-2-305~~ unless it is impracticable to
 3 do so. In all other cases, the department shall complete the investigation and make a finding of whether
 4 the complaint is supported by substantial evidence within 180 days, unless it is impracticable to do so.

5 (5) If the department is unable to complete the investigation within the time provided in subsection
 6 (4), the department shall notify the complainant and respondent in writing of the reasons for not doing so."

7

8 **Section 5.** Section 49-2-505, MCA, is amended to read:

9 **"49-2-505. Contested case hearing.** (1) If the informal efforts to eliminate the alleged
 10 discrimination are unsuccessful, the department shall hold a hearing on the complaint. The department
 11 shall serve notice of the hearing and a copy of the complaint on the parties.

12 (2) (a) If the parties mutually agree to permit the department to retain jurisdiction of the case
 13 under this chapter for a period of time that exceeds ~~12 months~~ 395 days after the complaint was filed,
 14 then the parties shall stipulate to a schedule for proceedings to be established by the department.

15 (b) The department shall, not later than 395 days after the complaint was filed, set a date for an
 16 administrative hearing in the case.

17 (c) The case must be heard no later than 90 days after the date is set by the department. The
 18 department may, in its sole discretion, issue a continuance of the hearing date only upon a showing of
 19 good cause.

20 (3) (a) The hearing must be held by the department in the county where the unlawful conduct is
 21 alleged to have occurred unless a party charged in the complaint requests and is granted a change of
 22 venue for good cause shown. The case in support of the complaint may be presented before the
 23 department by the complainant or an attorney representing the complainant. The hearing and any
 24 subsequent proceedings under this chapter must be held in accordance with the applicable portions of the
 25 Montana Rules of Civil Procedure as adopted by the department.

26 (b) Upon request of the hearings officer, the department may present evidence with regard to
 27 activity conducted. However, except in cases ~~brought pursuant to 42 U.S.C. 3601, et seq.~~ alleging a
 28 violation of 49-2-305, the department may not represent either party in a contested case hearing.

29 (4) A party may appeal a decision of the hearings officer to the commission. A party shall provide
 30 notice of its appeal to the commission, the department, and all parties within 10 business days of receipt

1 of the notice of decision of the administrative hearing. The commission shall hear all appeals within 120
 2 days of receipt of notice of appeal. The commission shall render a decision within 90 days of hearing the
 3 appeal. A party who is dissatisfied with a final decision of the commission is entitled to judicial review in
 4 accordance with Title 2, chapter 4, part 7.

5 (5) All hearings conducted under this section may, upon stipulation of the parties, be heard
 6 telephonically.

7 (6) 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 (7) The prevailing party in a hearing under this section may bring an action in district court for
 10 attorney fees. The court in its discretion may allow the prevailing party reasonable attorney fees. An action
 11 under this section must comply with the Montana Rules of Civil Procedure."
 12

13 **Section 6.** Section 49-2-509, MCA, is amended to read:

14 **"49-2-509. Conclusion of complaint -- filing in district court.** ~~(1) Except as provided in subsection~~
 15 ~~(2), the department shall, at the request of either party, conclude the administrative proceedings if:~~

16 ~~—— (a) the department has completed its investigation of a complaint filed pursuant to 49-2-305; or~~

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

18 ~~—— (2) The department may not refuse to conclude the administrative proceedings unless:~~

19 ~~—— (a) the party requesting the conclusion of the administrative proceedings has waived the right to~~
 20 ~~request filing in the district court;~~

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

23 ~~—— (c) the party requesting conclusion of the administrative proceedings has unsuccessfully attempted~~
 24 ~~through court litigation to prevent the department from investigating the complaint.~~

25 ~~(3)~~(1) The department shall dismiss a complaint filed under this chapter and the complainant may
 26 file a discrimination action in district court if:

27 (a) the commission or the department lacks jurisdiction over the complaint;

28 (b) the complainant fails to cooperate in the investigation of the complaint or fails to keep the
 29 department advised of changes of address;

30 (c) the department determines that the allegations of the complaint are not supported by a

1 ~~preponderance of the~~ substantial evidence; or

2 (d) ~~the department determines that the commission or the~~ except for complaints alleging a
 3 violation of 49-2-305 and except as provided in subsection (2), upon request of a party, the department
 4 ~~will not or cannot hold a~~ has not set a date for hearing within ~~12 months~~ 395 days after the filing of the
 5 complaint.

6 (2) The department may not refuse to dismiss the complaint upon receipt of request from a party
 7 under subsection (1)(d) unless:

8 (a) the party requesting dismissal has waived the right to request dismissal;

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

11 (c) the party requesting dismissal has unsuccessfully attempted through court litigation to prevent
 12 the department from investigating the complaint; or

13 (d) the parties have stipulated to extend the department's jurisdiction.

14 ~~(4)~~(3) A decision of the department to dismiss a complaint brought under this chapter or to refuse
 15 to ~~permit removal to the district court~~ dismiss is final unless a party seeks review by filing objections
 16 within 14 days after the decision is served on the party. The commission shall review the decision in
 17 informal proceedings under 2-4-604. A party may ask the district court to review a decision of the
 18 commission made under this section. The review must be de novo.

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

25 ~~(6)~~(5) If the district court finds, in an action under this section, that a person, institution, entity,
 26 or agency against whom or which a complaint was filed has engaged in the unlawful discriminatory
 27 practice alleged in the complaint, the court may provide the same relief as described in 49-2-506 for a
 28 commission order. In addition, the court may in its discretion allow the prevailing party reasonable attorney
 29 fees.

30 ~~(7)~~(6) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged

1 violation of chapter 3 or this chapter, including acts that may otherwise also constitute a violation of the
2 discrimination provisions of Article II, section 4, of the Montana constitution or 49-1-102. A claim or
3 request for relief based upon the acts may not be entertained by a district court other than by the
4 procedures specified in this chapter."

5

6 **Section 7.** Section 49-2-510, MCA, is amended to read:

7 **"49-2-510. Procedures and remedies for enforcement of housing discrimination laws -- contested**
8 **case hearing.** (1) A complaint may be filed with the department by or on behalf of a ~~party~~ person claiming
9 to be aggrieved by any discriminatory practice prohibited by 49-2-305. The complaint must be in written
10 form, ~~verified by the aggrieved party,~~ and must be filed with the department within ~~180 days~~ 1 year after
11 the alleged unlawful discriminatory practice occurred or was discovered. The provisions of 49-2-504
12 concerning investigation and conciliation apply to the complaint.

13 (2) If the department determines that the allegations of the complaint are supported by substantial
14 evidence and the informal efforts to eliminate the alleged discrimination are unsuccessful, the department
15 shall cause written notice to be served, together with a copy of the complaint, requiring the person
16 charged in the complaint to answer the allegations of the complaint at a hearing before the department.

17 (3) (a) When a complaint is filed alleging a violation of 49-2-305, a complainant, respondent, or
18 aggrieved person on whose behalf the complaint was filed may elect to have the claims decided in a civil
19 action in lieu of a hearing under subsection (4). The election must be made no later than 20 days after
20 receipt by the electing person of service of notice of certification for hearing under subsection (4). The
21 person making the election shall give notice to the department and to all other complainants and
22 respondents to whom the complaint relates. Within 30 days after the election is made, the complainant,
23 the department, or the aggrieved person may commence a civil action in an appropriate district court on
24 behalf of the aggrieved person if the department has made a finding that the allegations of the complaint
25 are supported by substantial evidence. If the department has made a finding that the allegations of the
26 complaint are not supported by substantial evidence, the complainant may commence a civil action in an
27 appropriate district court in accordance with subsection (7). An aggrieved person with respect to the
28 issues to be determined in a civil action brought by the department may intervene in the action.

29 (b) The department may not continue administrative proceedings on a complaint after an election
30 is made in accordance with subsection (3)(a).

1 (4) If an election is not made under subsection (3), the department shall hold a hearing in
 2 accordance with 49-2-505, except that 49-2-505(2) does not apply to hearings under this section. In
 3 addition to the provisions of 49-2-505, in a hearing under this section:

4 (a) the case in support of the complaint may be presented by the department, the complainant,
 5 or an attorney representing the complainant; and

6 (b) the department and the commission shall complete the administrative proceedings and make
 7 a final decision in the case within 1 year of the date of receipt of the complaint, unless it is impracticable
 8 to do so. If the department and commission are unable to complete the hearing and make a final decision
 9 within 1 year, the department shall notify the parties in writing of the reasons for not doing so.

10 ~~(2)(5)~~ (a) # Except as provided in subsection (5)(b), if the department, ~~on appeal,~~ or the
 11 commission, in a hearing under ~~49-2-505~~ subsection (4), or the commission on appeal finds that a party
 12 person against whom a complaint was filed under this part has engaged in a discriminatory practice in
 13 violation of 49-2-305, the department or the commission may, in addition to the remedies and injunctive
 14 and other equitable relief provided by 49-2-506, to vindicate the public interest, assess a civil penalty:

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

18 ~~(b)(ii)~~ (ii) in an amount not exceeding \$25,000 if the respondent has been ~~adjudged in any prior judicial~~
 19 or formal administrative proceedings ~~found~~ to have committed one or more ~~similar~~ other discriminatory
 20 housing practices ~~practice~~ in repeated violation of a ~~subsection of~~ 49-2-305 during the 5-year period
 21 ending 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 (5)(a)(ii) and
 28 (5)(a)(iii) may be imposed without regard to the period of time within which any prior discriminatory
 29 housing practice occurred.

30 ~~(3)(6)~~ (6) 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~~ department shall, no later than 30 days after the date of the issuance of the order
 3 or, if the 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 may elect to have~~
 9 ~~the claims decided in a civil action in lieu of a hearing under 49-2-505. The election must be made no later~~
 10 ~~than 20 days after receipt by the electing person of service of notice of certification for hearing under~~
 11 ~~49-2-505. The person making the election shall give notice to the department and to all complainants and~~
 12 ~~other respondents named in the complaint. Within 30 days after the election is made, the complainant,~~
 13 ~~the commissioner, or the aggrieved party may commence a civil action in an appropriate district court on~~
 14 ~~behalf of the aggrieved party if the department has made a finding that the allegations of the complaint~~
 15 ~~are supported by a preponderance of the evidence. If the department has made a finding that the~~
 16 ~~allegations of the complaint are not supported by a preponderance of the evidence, the complainant may~~
 17 ~~commence a civil action in an appropriate district court in accordance with subsection (5). An aggrieved~~
 18 ~~party with respect to the issues to be determined in a civil action brought by the department may intervene~~
 19 ~~in the action.~~

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

22 ~~(5)(7)~~ (a) An aggrieved ~~party~~ person may commence a civil action in an appropriate district court
 23 within 2 years after an alleged unlawful discriminatory practice under 49-2-305 occurred or was
 24 discovered or within 2 years of the breach of a conciliation agreement entered into under 49-2-504 in a
 25 case alleging a violation of 49-2-305. The computation of the 2-year period does not include any time
 26 during which an administrative proceeding under this title was pending with respect to a complaint alleging
 27 a violation of 49-2-305. The tolling of the time limit for commencing a civil action does not apply to
 28 actions arising from breach of a conciliation agreement.

29 (b) An aggrieved ~~party~~ person may commence a civil action under this subsection (7) for a
 30 violation of 49-2-305 whether or not a complaint has been filed under 49-2-501 and without regard to the

1 status of a complaint filed with the department, except as provided in subsection ~~(5)(d)~~ (7)(d). If the
2 department has obtained a conciliation agreement with the consent of the aggrieved party person, an
3 action may not be filed under this subsection by the aggrieved party person regarding the alleged violation
4 of 49-2-305 that forms the basis for the complaint except for the purpose of enforcing the terms of the
5 agreement.

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

9 (d) An aggrieved party person may not commence a civil action under this subsection ~~(5)~~ (7) with
10 respect to an alleged violation of 49-2-305 if ~~the commission or~~ the department has commenced a hearing
11 on the record under ~~49-2-505~~ subsection (4) regarding the same complaint.

12 (e) Upon application by a person alleging a violation of 49-2-305 in a civil action under this
13 subsection ~~(5)~~ (7) or by a person against whom the violation is alleged, the court may:

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

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

19 (f) Upon timely application, the department may intervene in a civil action brought under this
20 subsection (7) if the department certifies that the case is of general public importance. Upon intervention,
21 the department may obtain the same relief that would be available to the department under subsection (9).

22 ~~(6)(8)~~ If the court finds that a party person against whom a complaint was filed under this section
23 ~~has been adjudicated in a civil or formal administrative proceeding to have~~ engaged in a similar
24 discriminatory practice in violation of ~~a subsection of~~ 49-2-305, the court may, ~~consistent with the~~
25 ~~provisions of subsection (2) in addition to the other remedies and injunctive and other equitable relief~~
26 provided under 49-2-506, award punitive damages. The court may also award attorney fees to the
27 ~~substantively~~ prevailing party.

28 (9) (a) Whenever the department has reasonable cause to believe that a person or group of
29 persons is engaged in a pattern or practice in violation of 49-2-305 or that a group of persons has been
30 discriminated against in violation of 49-2-305 and the violation raises an issue of general public

1 importance, the department may commence a civil action in an appropriate district court. The department
2 may also commence a civil action in any appropriate district court for relief regarding breach of a
3 conciliation agreement in a case regarding an alleged violation of 49-2-305 if the department is a party to
4 the agreement.

5 (b) The department may file a civil action under this subsection (9) within 18 months after the
6 alleged breach of the conciliation agreement or unlawful discriminatory practice occurred or was
7 discovered.

8 (c) In a civil action under this subsection (9), the court may, in addition to the remedies provided
9 under 49-2-506, assess a civil penalty against the respondent:

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

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

12 (d) Upon timely application, a person may intervene in a civil action under this subsection (9) that
13 involves an alleged violation of 49-2-305 with respect to which the intervenor is an aggrieved person.

14 ~~(7) (a)(10) Except as provided in subsection (7)(b), all civil and administrative Civil penalties and~~
15 ~~other revenue generated under this part section must be paid to the state treasurer to be deposited in the~~
16 ~~state general fund.~~

17 ~~(b) Damages or penalties, whether monetary or otherwise, may not inure to an organization unless~~
18 ~~the organization is an aggrieved party. This section does not affect any amount owed to an aggrieved~~
19 ~~party."~~

20 - END -