

Montana's Constitution, Article II, Section 4:

- The dignity of the human being is inviolable. [dignity clause]
- No person shall be denied equal protection of the laws. [equal protection clause]
- Neither the state, nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights ... [anti-discrimination clause]

*49-2-101(11) MCA: Some employers are exempt from civil rights laws.*

“The definition of employer in the Montana Human Rights Act does not include a fraternal, charitable, or religious association or corporation if the association or corporation is not organized either for private profit or to provide accommodations or services that are available on a nonmembership basis.”

*49-2-102 (20) MCA: Some public accommodations are exempt from civil rights laws.*

“Public accommodations does not include an institution, club, or place of accommodation that proves that it is by its nature distinctly private.”

The US Supreme Court upheld the right of Boy Scouts of America to exclude gays from membership.

*MCA 49-2-305 (2) MCA: Some housing is exempt from civil rights laws.*

“The rental of sleeping rooms in a private residence designed for single-family occupancy in which the owner also resides is excluded from the provisions...”

*Citizen Initiative 96: Some government services are exempt from civil rights laws.*

49-2-308 prohibits the state from denying any service to any person because of that person's race, religion, etc.

But what about marriage? A majority of Montana voters amended the Constitution to restrict marriage to heterosexuals. The Constitution is the final arbiter on this question; SB 199 cannot be construed as allowing gays and lesbians to apply for a marriage license.

*With these exemptions accounted for, is it still in the state's interest to sanction discrimination based on sexual orientation?*

Montana Supreme Court opinion in *Snetsinger v Montana*: “These two groups, although similarly situated in all respects other than sexual orientation, are not treated equally and fairly. ... Therefore, we conclude there is no justification for treating the two groups differently.” Sexual orientation discrimination is not a “legitimate government interest.”