

HOUSE BILL NO. 76
INTRODUCED BY W. MCNUTT, F. WILMER
BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING PROCEDURES FOR PROCESSING OF HUMAN RIGHTS COMPLAINTS; ADDING THE DEPARTMENT OF LABOR AND INDUSTRY AS A PARTY OF INTEREST IN TEMPORARY INJUNCTION PROVISIONS AND IN PROVISIONS FOR ENFORCEMENT PETITIONS FOR ORDERS AND CONCILIATION AGREEMENTS; CLARIFYING THE FUNCTION OF INFORMAL INVESTIGATION PROCESS; CLARIFYING PROCEDURES INCLUDING PROCEDURES FOR FILING COMPLAINTS, DEPARTMENT PROCESSES FOLLOWING INFORMAL INVESTIGATIONS BY THE DEPARTMENT, FILING OF OBJECTIONS, AND HEARING PROCEDURES AND RESPONSIBILITIES; CLARIFYING PROCEDURES UPON A FINDING OF DISCRIMINATION AND IN APPEALS; REVISING AND CLARIFYING PROCEDURES FOR THE REVIEW OF DEPARTMENT ACTION BY THE HUMAN RIGHTS COMMISSION; REVISING AND CLARIFYING PROCEDURES FOR CONCLUSION OF A COMPLAINT; REVISING AND CLARIFYING PROCEDURES AND REMEDIES IN HOUSING DISCRIMINATION COMPLAINTS; AMENDING SECTIONS 49-2-501, 49-2-503, 49-2-504, 49-2-505, 49-2-506, 49-2-508, AND 49-2-510, MCA; REPEALING SECTIONS 49-2-507 AND 49-2-509, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 49-2-501, MCA, is amended to read:

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

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

(3) The complaint must be ~~in the form of a written; and verified complaint stating and must state the~~ name and address of the party, ~~educational institution, financial institution, or governmental entity or agency~~

alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice.

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

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

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

(5) If the department determines that the complaint is untimely, it shall dismiss the complaint on a finding of no reasonable cause. A charging party may file objections to the dismissal with the commission pursuant to [section 6]."

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

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

Section 3. Section 49-2-504, MCA, is amended to read:

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

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

(b) If the department makes a finding under subsection (7)(c) that there is reasonable cause to believe

that unlawful discrimination occurred, the department shall attempt to achieve a resolution of resolve the complaint by conference, conciliation, and persuasion in a manner that, in addition to providing redress for the complaint, includes conditions that eliminate the discriminatory practice, if any, identified found in the investigation.

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

~~(b)(4)~~ If a complaint is filed relative to an employment-related complaint and if the commissioner decides the department determines that the inclusion of documents or information ~~contained in the complaint~~ obtained by the department would seriously impede the rights of a person or the proper investigation of the complaint, the information may be excluded from the notification by providing a written summary of the information ~~contained in the complaint~~. The written summary must include sufficient information to give maximum effect to the intent of this chapter.

~~(2)(5)~~ The respondent shall file an answer to a complaint filed with the department within 10 business days of the respondent's receipt of the complaint. An answer may be a response simply admitting or denying the allegations without further specificity or requesting additional information from the department. The time for filing an answer may be extended by a showing of good cause.

~~(3)(6)~~ The department shall commence proceedings within 30 days after receipt of a complaint.

~~(4)(7)~~ (a) ~~The~~ After the informal investigation, the department shall make issue a finding regarding the merit or nonmerit of the complaint on whether there is reasonable cause to believe that a preponderance of the evidence supports the charging party's allegation of unlawful discrimination. The finding must be issued within 180 days after a complaint is filed, except that the department shall make issue the finding within 120 days after a complaint is filed under 49-2-305.

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

(i) continue the administrative process by filing objections with the commission as provided in [section

6]; or

(ii) discontinue the administrative process and commence proceedings in district court as provided in [section 6].

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

Section 4. Section 49-2-505, MCA, is amended to read:

"49-2-505. Contested case hearing -- appeal to commission -- final agency decision. (1) ~~If the informal efforts to eliminate the alleged discrimination are unsuccessful, the~~ The department shall hold a contested case hearing on ~~the a~~ complaint that is certified for hearing under 49-2-504 or that is remanded for hearing by the commission or by a reviewing court. The department shall serve notice of the hearing and a copy of the complaint on the parties.

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

~~(b) The department shall, not later than 395 days after the complaint was filed, set a date for an administrative hearing in the case~~ in accordance with the stipulated schedule.

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

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

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

(c) If the case is not settled, fully decided on order or motion, or otherwise resolved, after a hearing, the

hearings officer shall issue a decision. If the decision is not appealed to the commission within 14 days as provided in subsection (4), the decision becomes final and is not appealable to district court.

(4) A party may appeal a decision of the hearings officer ~~to the commission. A party shall provide notice of its~~ by filing an appeal to ~~with the commission, the department, and all parties~~ within ~~40 business~~ 14 days of receipt after the issuance of the notice of decision of the administrative hearing.

(5) The commission shall hear all appeals within 120 days of receipt of ~~notice of an~~ an appeal. The commission may affirm, reject, or modify the decision in whole or in part. The commission shall render a final agency decision within 90 days of hearing the appeal.

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

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

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

(9) Within 30 days after the commission issues a final agency decision in writing under subsection (5), a party may petition a district court for judicial review of the final agency decision as provided in 2-4-702."

Section 5. Section 49-2-506, MCA, is amended to read:

"49-2-506. Procedure upon a decision finding of discrimination. (1) If the ~~commission or the department, after a hearing,~~ hearings officer finds that a party against whom a complaint was filed has engaged in the discriminatory practice alleged in the complaint, ~~the commission or the department~~ shall order the party to refrain from engaging in the discriminatory conduct. The order may:

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

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

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

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

(3) Whenever ~~a commission or department~~ an order or conciliation agreement requires inspection by the department for a period of time to determine if the respondent is complying with that order or agreement, the

period of time may not be more than 1 year."

NEW SECTION. Section 6. Dismissal after informal proceedings -- filing of objections -- procedures -- action in district court. (1) If the department, after the informal investigation, issues a notice of dismissal under 49-2-501(5) or 49-2-504(7)(b), a charging party may file objections to the dismissal with the commission. The objections must be filed with the commission within 14 days after the issuance of the notice of dismissal.

(2) (a) The commission shall consider the objection in an informal hearing and review the department's findings for an abuse of discretion.

(b) If the commission overrules the objection, it shall issue its order affirming the department's notice of dismissal.

(c) If the commission sustains the objection, it shall reopen the case by remanding it to the department.

(3) (a) Within 90 days after the department has issued a notice of dismissal pursuant to 49-2-501(5) or 49-2-504(7)(b) or within 90 days after the commission has issued an order affirming the department's notice of dismissal pursuant to subsection (2)(b) of this section, the charging party may commence a civil action for appropriate relief on the merits of the case in the district court in the district in which the alleged violation occurred. If the charging party fails to commence the civil action in the district court within 90 days after the final agency decision has been issued, the claim is barred. The court may provide the same relief as described in 49-2-506. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees and costs.

(b) Within 30 days after the commission issues an order affirming the department's notice of dismissal pursuant to subsection (2)(b), a party may petition a district court for judicial review of the final agency decision as provided in 2-4-604.

Section 7. Section 49-2-508, MCA, is amended to read:

"49-2-508. Enforcement of commission or department order or conciliation agreement. If the order issued under 49-2-506 is not obeyed, the commissioner, the department, or a party may petition the district court in the county where the discriminatory practice occurred or in which the respondent resides or transacts business to enforce the commission's or department's order by any appropriate order. The commissioner, the department, or a party may also commence a civil action in an appropriate district court for relief for a breach of a conciliation agreement."

NEW SECTION. Section 8. Filing in district court -- compliance with administrative procedures required. (1) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged violation of chapter 3 or this chapter, including acts that may otherwise also constitute a violation of the discrimination provisions of Article II, section 4, of the Montana constitution or 49-1-102. A claim or request for relief based upon the acts may not be entertained by a district court other than by the procedures specified in this chapter.

(2) In addition to dismissal under 49-2-501(5) or 49-2-504(7)(b), the department shall dismiss a complaint if:

(a) the charging party fails to keep the department advised of changes of address and the department finds that the failure has impeded the administrative proceedings; or

(b) a period of 12 months has elapsed from the filing of a complaint and neither the department nor the commission has held a hearing pursuant to 49-2-505 or an informal hearing pursuant to [section 6]. However, the department or the commission may refuse to dismiss a complaint under this subsection (2)(b) if:

(i) more than 30 days have elapsed since service of notice of hearing under 49-2-505;

(ii) the parties have stipulated to a reasonable extension of the timeframes; or

(iii) through litigation a party has unsuccessfully sought to prevent the department or the commission from conducting administrative proceedings on the complaint.

(3) Within 90 days after the department has issued a notice of dismissal pursuant to subsection (2), the charging party may commence a civil action for appropriate relief on the merits of the case in the district court in the district in which the alleged violation occurred. If the charging party fails to commence a civil action within 90 days after the dismissal has been issued, the claim is barred. The court may provide the same relief as described in 49-2-506. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees and costs.

Section 9. Section 49-2-510, MCA, is amended to read:

"49-2-510. Procedures and remedies for enforcement of housing discrimination laws. (1) A complaint may be filed with the department by or on behalf of a party person claiming to be aggrieved by any discriminatory practice prohibited by 49-2-305. The complaint must be ~~in written form,~~ and verified by the aggrieved ~~party,~~ person and must be filed with the department within 180 days after the alleged unlawful discriminatory practice occurred or was discovered.

(2) ~~If the department, on appeal, or the commission,~~ in a hearing under 49-2-505; the department finds

that a ~~party~~ person against whom a complaint was filed under this part has engaged in a discriminatory practice in violation of 49-2-305, the department ~~or the commission~~ may, in addition to the remedies and injunctive and other equitable relief provided by 49-2-506, to vindicate the public interest, assess a civil penalty:

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

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

(3) In the case of ~~an order~~ a decision with respect to a discriminatory housing practice in violation of 49-2-305 that occurred in the course of a business subject to licensing or regulation by a governmental agency, the ~~commission~~ department shall, no later than 30 days after the date of the issuance of the order ~~or, if the order is judicially reviewed, no later than 30 days after the order is affirmed~~ send copies of the findings of fact, the conclusions of law, and the order send a copy of the decision to the licensing or regulatory agency.

(4) (a) ~~When~~ Following completion of the informal investigation of a complaint is filed under 49-2-305, a ~~complainant~~ charging party or a respondent may elect to have the claims decided in a civil action in lieu of a hearing under 49-2-505. The election must be made in writing no later than ~~20~~ 30 days after ~~receipt by the electing person of service~~ the service of notice of ~~certification for hearing under 49-2-505~~ on the electing party. The ~~person making the election~~ shall must give notice to the department and to all ~~complainants and other respondents~~ parties named in the complaint. Within 30 days after the election is made, the ~~complainant~~ charging party, the commissioner, or the aggrieved party may commence a civil action in an appropriate district court on behalf of the aggrieved party if the department has made a finding that the allegations of the complaint are supported by a preponderance of the evidence. If the department has made a finding that the allegations of the complaint are not supported by a preponderance of the evidence, the ~~complainant~~ charging party may commence a civil action in an appropriate district court in accordance with subsection (5). An aggrieved party with respect to the issues to be determined in a civil action brought by the department may intervene in the action.

(b) The department may not continue administrative proceedings on a complaint after an election is made in accordance with subsection (4)(a). The charging party may commence a civil action in an appropriate district court in accordance with subsection (5). An aggrieved party with respect to issues to be determined in a civil action brought by the department may intervene in the action.

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

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

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

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

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

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

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

(6) If the court finds that a party against whom a complaint was filed under this section has been adjudicated in a civil or formal administrative proceeding to have engaged in a similar discriminatory practice in violation of ~~a subsection of~~ 49-2-305, the court may, consistent with the provisions of subsection (2) of this section, award punitive damages. The court may also award attorney fees and costs to the substantively prevailing party.

(7) ~~(a) Except as provided in subsection (7)(b), all~~ All civil damages and ~~administrative penalties and~~

~~other revenue generated under this part, monetary or otherwise, awarded under this section to an organization that is not an aggrieved party must be deposited in the state general fund.~~

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

NEW SECTION. Section 10. Repealer. Sections 49-2-507 and 49-2-509, MCA, are repealed.

NEW SECTION. Section 11. Codification instruction. [Sections 6 and 8] are intended to be codified as an integral part of Title 49, chapter 2, part 5, and the provisions of Title 49, chapter 2, part 5, apply to [sections 6 and 8].

NEW SECTION. Section 12. Effective date. [This act] is effective July 1, 2007.

- END -