

HOUSE BILL NO. 725
INTRODUCED BY K. PETERSON

A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING TO ALL CLAIMS THE RIGHT OF EITHER PARTY TO A PROCEEDING BEFORE THE HUMAN RIGHTS BUREAU OF THE DEPARTMENT OF LABOR AND INDUSTRY TO ELECT TO CONCLUDE THE ADMINISTRATIVE PROCEEDINGS UPON COMPLETION OF THE DEPARTMENT'S INVESTIGATION OF A COMPLAINT; AND AMENDING SECTION 49-2-509, MCA."

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

Section 1. Section 49-2-509, MCA, is amended to read:

- "49-2-509. Conclusion of complaint -- filing in district court.** (1) Except as provided in subsection (2), the department shall, at the request of either party, conclude the administrative proceedings if:
- (a) the department has completed its investigation of a complaint ~~filed pursuant to 49-2-305~~; or
 - (b) 12 months have elapsed since the complaint was filed.
- (2) The department may not refuse to conclude the administrative proceedings unless:
- (a) the party requesting the conclusion of the administrative proceedings has waived the right to request filing in the district court;
 - (b) more than 30 days have elapsed since service of notice of hearing under 49-2-505, unless the department fails to schedule a hearing to be held within 90 days of service of notice of hearing; or
 - (c) the party requesting conclusion of the administrative proceedings has unsuccessfully attempted through court litigation to prevent the department from investigating the complaint.
- (3) The department shall dismiss a complaint filed under this chapter and the complainant may file a discrimination action in district court if:
- (a) the commission or the department lacks jurisdiction over the complaint;
 - (b) the complainant fails to cooperate in the investigation of the complaint or fails to keep the department advised of changes of address;
 - (c) the department determines that the allegations of the complaint are not supported by a preponderance of the evidence; or
 - (d) the department determines that the commission or the department will not or cannot hold a hearing within 12 months after the filing of the complaint.

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

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

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

(7) 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."

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