

1 HOUSE BILL NO. 453
2 INTRODUCED BY B. MERCER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE AUTHORITY OF THE HUMAN RIGHTS
5 BUREAU TO INVESTIGATE COMPLAINTS AND EXPANDING PARTIES' DISTRICT COURT ACCESS IN
6 THE APPEALS PROCESS; ESTABLISHING THAT ONLY ALLEGATIONS ~~UNDER TITLE 49, CHAPTERS 2~~
7 ~~AND 3, OF UNLAWFUL DISCRIMINATORY PRACTICES~~ BE INVESTIGATED UPON THE FILING OF A
8 COMPLAINT AND RESPONDENT'S NOTICE OF FILED COMPLAINT; ~~REMOVING THE CHARGING~~
9 ~~PARTY'S OPPORTUNITY TO OBJECT TO THE HUMAN RIGHTS COMMISSION UPON DISMISSAL OF A~~
10 ~~COMPLAINT FOR UNTIMELINESS~~; PROVIDING A DIRECT APPEAL TO DISTRICT COURT AND
11 ELIMINATING THE APPEAL TO THE HUMAN RIGHTS COMMISSION UPON A NO CAUSE FINDING;
12 PROVIDING DIRECT APPEALS TO DISTRICT COURT OF HEARINGS OFFICER DECISIONS; CLARIFYING
13 RULEMAKING AUTHORITY; AND AMENDING SECTIONS 49-2-204, 49-2-205, 49-2-501, 49-2-504, 49-2-505,
14 49-2-511, AND 49-3-106, MCA."

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

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18 **Section 1.** Section 49-2-204, MCA, is amended to read:

19 **"49-2-204. Rules.** (1) The commission shall adopt procedural ~~and substantive~~ rules necessary to
20 implement the commission's responsibilities under this chapter. ~~Rulemaking procedures must comply with the~~
21 ~~requirements of the Montana Administrative Procedure Act. At a minimum, the commission shall adopt as part~~
22 ~~of its procedural rules all applicable portions of the Montana Rules of Civil Procedure and the Montana Rules of~~
23 ~~Evidence. The commission may adopt the procedural provisions of Title 46 as it considers appropriate.~~

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

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2 **Section 2.** Section 49-2-205, MCA, is amended to read:

3 **"49-2-205. Purpose.** It is the intent of the legislature that the commission sit in independent judgment
4 of complaints of alleged discrimination in Montana and that the staff operate under the direction and control of
5 the commissioner. The staff is not independent of the commissioner. It is the intent of the legislature that the
6 commission and the department not favor, directly or indirectly, complainants or respondents with procedural or
7 substantive matters of discrimination in Montana. The commission and the department shall maintain the
8 highest standards of objectivity and impartiality when judging cases asserting alleged discrimination in
9 Montana. It is not the intent of the legislature that the department be prohibited from dismissing matters, from
10 referring matters to other agencies following an initial inquiry and interview, or from reaching a decision in an
11 investigation or contested case hearing. It is the intent of the legislature that the department shall receive a filed
12 complaint and notice that the respondent has received the department's notification of the complaint prior to any
13 investigation, formal or informal, and that the department only investigate unlawful discriminatory practices~~as~~
14 ~~provided for in Title 49, chapters 2 and 3."~~

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

17 **"49-2-501. Filing complaints.** (1) A person claiming to be aggrieved by any discriminatory practice
18 prohibited by this chapter may file a complaint with the department.

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

23 (3) The complaint must be written and verified and must state the name and address of the party
24 alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice.

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

28 (b) If the charging party has initiated efforts to resolve the dispute underlying the complaint by filing

1 a grievance in accordance with any grievance procedure established by a collective bargaining agreement,
 2 contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the
 3 grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful
 4 discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120
 5 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice occurred or
 6 was discovered.

7 (5) If the department determines that the complaint is untimely, it shall dismiss the complaint on a
 8 finding of no reasonable cause. ~~A charging party may file objections to the dismissal with the commission~~
 9 ~~pursuant to 49-2-511."~~

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

12 **"49-2-504. Informal investigation -- conciliation -- findings.** (1) The department shall informally
 13 investigate the matters set out in the complaint promptly and impartially to determine whether there is
 14 reasonable cause to believe that the allegations are supported by a preponderance of the evidence and that the
 15 allegations fall under unlawful discriminatory practices as provided for in Title 49, chapters 2 and 3.

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

18 (b) If the parties to the complaint voluntarily agree to enter into the mediation process, the time
 19 period for the department to complete the informal investigation and issue a finding under subsection (7) may
 20 be extended up to 45 days. An agreement to enter into mediation serves to extend the time for hearing beyond
 21 12 months as provided for in 49-2-505(2).

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

26 (3) The department shall, within 10 business days following receipt of a filed complaint, notify a
 27 respondent that the respondent is the subject of a filed complaint. The notification must be in writing and must
 28 include a copy of the filed complaint. If requested, the department shall also provide the parties with all other

1 information related to the complaint in the possession of the department that is not currently in the possession
2 of the parties or a party. The department shall make known to the parties the fact that information is available
3 upon request. The department may not investigate a complaint until it has received notice that the respondent
4 has received the department's notification of the complaint.

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

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

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

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

19 (b) If the department finds that there is no reasonable cause to believe that unlawful discrimination
20 occurred, it shall issue a notice of dismissal, ~~and dismiss the case from the department's administrative~~

21 ~~process. After receipt of a notice of dismissal, a charging party may:~~

22 (i) ~~continue the administrative process by filing objections with the commission as provided in 49-2-~~
23 ~~511; or~~

24 (ii) ~~discontinue the administrative process and commence proceedings in district court as provided in~~
25 ~~49-2-511.~~

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

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

"49-2-505. Contested case hearing -- appeal to commission or district court -- final agency

decision. (1) The department shall hold a contested case hearing on 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) If the parties mutually agree to extend the time for hearing beyond 12 months after the complaint is filed, then the parties shall stipulate to a schedule for proceedings to be established by the department. 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. 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 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 charging party or an attorney representing the charging party. The hearing must be held in accordance with the applicable portions of the Montana Rules of Civil Procedure.

(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 or district court within 14 days as provided in subsection (4), ~~the decision becomes final and is not appealable to district court~~ the decision becomes final as provided in subsection (4).

(4) A party may appeal a decision of the hearings officer by filing an appeal with the commission within 14 days after the issuance of the notice of decision of the administrative hearing or by filing an appeal with the district court within 14 days of the decision of the administrative hearing. If a party timely appeals to the commission, ~~the other either~~ party may remove the matter to district court within 14 days of the appeal to the

1 commission.

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

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

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

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

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

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15 **Section 6.** Section 49-2-511, MCA, is amended to read:

16 **"49-2-511. Dismissal after informal proceedings ~~—filing of objections—procedures—~~ action in**
17 **district court.** ~~(1) If the department, after the informal investigation, issues a notice of dismissal under 49-2-~~
18 ~~501(5) or 49-2-504(7)(b), a charging party may file objections to the dismissal with the commission. The~~
19 ~~objections must be filed with the commission within 14 days after the issuance of the notice of dismissal.~~

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

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

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

26 ~~(3) (a) Within 90 days after the department has issued a notice of dismissal pursuant to 49-2-~~
27 ~~501(5) or 49-2-504(7)(b) or within 90 days after the commission has issued an order affirming the department's~~
28 ~~notice of dismissal pursuant to subsection (2)(b) of this section, the charging party may commence a civil action~~

1 for appropriate relief on the merits of the case in the district court in the district in which the alleged violation
 2 occurred. If the charging party fails to commence the civil action in the district court within 90 days after the ~~final~~
 3 ~~agency decision dismissal~~ has been issued, the claim is barred. The court may provide the same relief as
 4 described in 49-2-506. In addition, the court may in its discretion allow the prevailing party reasonable attorney
 5 fees and costs.

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

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10 **Section 7.** Section 49-3-106, MCA, is amended to read:

11 **"49-3-106. Rulemaking authority.** ~~The commission may adopt rules~~Rules necessary for the
 12 implementation of this chapter, ~~in accordance with the Montana Administrative Procedure Act. may be adopted~~
 13 ~~pursuant to 49-2-204.~~ The rules may include but are not limited to procedural rules for:

- 14 ~~(1) filing of complaints;~~
- 15 ~~(2) conducting investigations of filed complaints;~~
- 16 ~~(3) petitioning for a declaratory ruling; and~~
- 17 ~~(4) conduct of hearings."~~

18 - END -