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HOUSE BILL NO. 453

INTRODUCED BY B. MERCER

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE AUTHORITY OF THE HUMAN RIGHTS BUREAU TO INVESTIGATE COMPLAINTS AND EXPANDING PARTIES' DISTRICT COURT ACCESS IN THE APPEALS PROCESS; ESTABLISHING THAT ONLY ALLEGATIONS UNDER TITLE 49, CHAPTERS 2 AND 3, BE INVESTIGATED UPON THE FILING OF A COMPLAINT AND RESPONDENT'S NOTICE OF FILED COMPLAINT; PROVIDING A DIRECT APPEAL TO DISTRICT COURT AND ELIMINATING THE APPEAL TO THE HUMAN RIGHTS COMMISSION UPON A NO CAUSE FINDING; PROVIDING DIRECT APPEALS TO DISTRICT COURT OF HEARINGS OFFICER DECISIONS; CLARIFYING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 49-2-205, 49-2-504, 49-2-505, 49-2-511, AND 49-3-106, MCA."

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

Section 1. Section 49-2-205, MCA, is amended to read:

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

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

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

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

8 (b) If the parties to the complaint voluntarily agree to enter into the mediation process, the time
9 period for the department to complete the informal investigation and issue a finding under subsection (7) may
10 be extended up to 45 days. An agreement to enter into mediation serves to extend the time for hearing beyond
11 12 months as provided for in 49-2-505(2).

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

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

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

27 (5) The respondent shall file an answer to a complaint filed with the department within 10 business
28 days of the respondent's receipt of the complaint. An answer may be a response simply admitting or denying

1 the allegations without further specificity or requesting additional information from the department. The time for
2 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) After the informal investigation, the department shall issue a finding on whether there is
5 reasonable cause to believe that a preponderance of the evidence supports the charging party's allegation of
6 unlawful discrimination. Unless the time period is extended as provided in subsection (2)(b), the finding must be
7 issued within 180 days after a complaint is filed, except that the department shall issue the finding within 120
8 days after a complaint is filed under 49-2-305.

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

12 ~~(i) continue the administrative process by filing objections with the commission as provided in 49-2-~~
13 ~~511; or~~

14 ~~(ii) discontinue the administrative process and commence proceedings in district court as provided in~~
15 ~~49-2-511.~~

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

19
20 **Section 3.** Section 49-2-505, MCA, is amended to read:

21 **"49-2-505. Contested case hearing -- appeal to commission or district court -- final agency**
22 **decision.** (1) The department shall hold a contested case hearing on a complaint that is certified for hearing
23 under 49-2-504 or that is remanded for hearing by the commission or by a reviewing court. The department
24 shall serve notice of the hearing and a copy of the complaint on the parties.

25 (2) If the parties mutually agree to extend the time for hearing beyond 12 months after the
26 complaint is filed, then the parties shall stipulate to a schedule for proceedings to be established by the
27 department. The department shall, not later than 395 days after the complaint was filed, set a date for an
28 administrative hearing in the case in accordance with the stipulated schedule. After a hearing date is set, the

1 department may, in its sole discretion, issue a continuance of the hearing date only upon a showing of good
2 cause.

3 (3) (a) The hearing must be held by the department in the county where the unlawful conduct is
4 alleged to have occurred unless a party requests and is granted a change of venue for good cause shown. The
5 case in support of the complaint may be presented before the department by the charging party or an attorney
6 representing the charging party. The hearing must be held in accordance with the applicable portions of the
7 Montana Rules of Civil Procedure.

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

11 (c) If the case is not settled, fully decided on order or motion, or otherwise resolved, after a
12 hearing, the hearings officer shall issue a decision. If the decision is not appealed to the commission or district
13 court within 14 days as provided in subsection (4), the decision becomes final and is not appealable to district
14 court the decision becomes final as provided in subsection (4).

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

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

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

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

27 (8) The prevailing party in a hearing under this section may bring an action in district court for
28 attorney fees and costs. The court in its discretion may allow the prevailing party reasonable attorney fees and

1 costs. An action under this section must comply with the Montana Rules of Civil Procedure.

2 (9) Within 30 days after the commission issues a final agency decision in writing under subsection
3 (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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5 **Section 4.** Section 49-2-511, MCA, is amended to read:

6 **"49-2-511. Dismissal after informal proceedings -- filing of objections -- procedures -- action in**

7 **district court.** (1) If the department, after the informal investigation, issues a notice of dismissal under 49-2-

8 501(5) ~~or 49-2-504(7)(b)~~, a charging party may file objections to the dismissal with the commission. The

9 objections must be filed with the commission within 14 days after the issuance of the notice of dismissal.

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

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

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

16 (3) (a) Within 90 days after the department has issued a notice of dismissal pursuant to 49-2-
17 501(5) or 49-2-504(7)(b) or within 90 days after the commission has issued an order affirming the department's
18 notice of dismissal pursuant to subsection (2)(b) of this section, the charging party may commence a civil action
19 for appropriate relief on the merits of the case in the district court in the district in which the alleged violation
20 occurred. If the charging party fails to commence the civil action in the district court within 90 days after the final
21 agency decision has been issued, the claim is barred. The court may provide the same relief as described in
22 49-2-506. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees and
23 costs.

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

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28 **Section 5.** Section 49-3-106, MCA, is amended to read:

