

MONTANA CODE ANNOTATED
TITLE 49. HUMAN RIGHTS
CHAPTER 2. ILLEGAL DISCRIMINATION
PART 3. PROHIBITED DISCRIMINATORY PRACTICES
49-2-305. Discrimination in housing -- exemptions

(1) It is an unlawful discriminatory practice for the owner, lessee, or manager having the right to sell, lease, or rent a housing accommodation or improved or unimproved property or for any other person:

(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, marital status, race, creed, religion, color, age, familial status, physical or mental disability, or national origin;

(b) to discriminate against a person because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of the housing accommodation or property;

(c) to make an inquiry of the sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin of a person seeking to buy, lease, or rent a housing accommodation or property for the purpose of discriminating on the basis of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin;

(d) to refuse to negotiate for a sale or to otherwise make unavailable or deny a housing accommodation or property because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin;

(e) to represent to a person that a housing accommodation or property is not available for inspection, sale, or rental because of that person's sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin when the housing accommodation or property is in fact available; or

(f) for profit, to induce or attempt to induce a person to sell or rent a housing accommodation or property by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin.

(2) 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 of subsection (1), provided that the owner rents no more than three sleeping rooms within the residence.

(3) It is an unlawful discriminatory practice to make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement that indicates any preference, limitation, or discrimination that is prohibited by subsection (1) or any intention to make or have a prohibited preference, limitation, or discrimination.

(4) It is an unlawful discriminatory practice for a person to discriminate because of a physical or mental disability of a buyer, lessee, or renter; a person residing in or intending to reside in or on the housing accommodation or property after it is sold, leased, rented, or made available; or any person associated with that buyer, lessee, or renter:

(a) in the sale, rental, or availability of the housing accommodation or property;

(b) in the terms, conditions, or privileges of a sale or rental of the housing accommodation or property; or

(c) in the provision of services or facilities in connection with the housing accommodation or property.

(5) For purposes of subsections (1) and (4), discrimination because of physical or mental disability includes:

(a) refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by the person with a disability if the modifications may be necessary to allow the person full enjoyment of the premises, except that in the case of a lease or rental, the landlord may, when it is reasonable to do so, condition permission for a modification on the lessor's or renter's agreement to restore the interior of the premises to the condition that existed before the modification, except for reasonable wear and tear;

(b) refusal to make reasonable accommodations in rules, policies, practices, or services when the accommodations may be necessary to allow the person equal opportunity to use and enjoy a housing accommodation or property; or

(c) (i) except as provided in subsection (5)(c)(ii), in connection with the design and construction of a covered multifamily housing accommodation, a failure to design and construct the housing accommodation in a manner that:

(A) provides at least one accessible building entrance on an accessible route;

(B) makes the public use and common use portions of the housing accommodation readily accessible to and usable by a person with a disability;

(C) provides that all doors designed to allow passage into and within all premises within the housing accommodation are sufficiently wide to allow passage by a person with a disability who uses a wheelchair; and

(D) ensures that all premises within the housing accommodation contain the following features of adaptive design:

(I) an accessible route into and through the housing accommodation;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms that allow an individual who uses a wheelchair to maneuver about the space;

(ii) a covered multifamily housing accommodation that does not have at least one building entrance on an accessible route because it is impractical to do so due to the terrain or unusual characteristics of the site is not required to comply with the requirements of subsection (5)(c)(i).

(6) For purposes of subsection (5), the term "covered multifamily housing accommodation" means:

(a) a building consisting of four or more dwelling units if the building has one or more elevators; and

(b) ground floor units in a building consisting of four or more dwelling units.

(7) (a) It is an unlawful discriminatory practice for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin against a person in making available a transaction or in the terms or conditions of a transaction.

(b) For purposes of this subsection (7), the term "residential real estate-related transaction" means any of the following:

(i) the making or purchasing of loans or providing other financial assistance:

(A) for purchasing, constructing, improving, repairing, or maintaining a housing accommodation or property; or

(B) secured by residential real estate; or

(ii) the selling, brokering, or appraising of residential real property.

(8) It is an unlawful discriminatory practice to deny a person access to or membership or participation in a multiple-listing service; real estate brokers' organization; or other service, organization, or facility relating to the business of selling, leasing, or renting housing accommodations or property or to discriminate against the person in the terms or conditions of access, membership, or participation because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin.

(9) It is an unlawful discriminatory practice to coerce, intimidate, threaten, or interfere with a person in the exercise or enjoyment of or because of the person having exercised or enjoyed or having aided or encouraged any other person in the exercise or enjoyment of a right granted or protected by this section.

(10) The prohibitions of this section against discrimination because of age and familial status do not extend to housing for older persons. "Housing for older persons" means housing:

(a) provided under any state or federal program specifically designed and operated to assist elderly persons;

(b) intended for, and solely occupied by, persons 62 years of age or older; or

(c) intended and operated for occupancy by at least one person 55 years of age or older per unit in accordance with the provisions of 42 U.S.C. 3607(b)(2)(C) and (b)(3) through (b)(5), as those provisions read on March 31, 1996.

(11) The prohibitions of subsection (1) against discrimination because of age and familial status do not extend to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than two families living independently of each other, if the owner actually maintains and occupies one of the living quarters as the owner's residence.

(12) For purposes of this section, "familial status" means having a child or children who live or will live with a person. A distinction based on familial status includes one that is based on the age of a child or children who live or will live with a person.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(4); amd. Sec. 6, Ch. 177, L. 1979; amd. Sec. 1, Ch. 335, L. 1981; amd. Sec. 1, Ch. 503, L. 1989; amd. Sec. 1, Ch. 328, L. 1991; amd. Sec. 2, Ch. 454, L. 1991; amd. Sec. 1, Ch. 801, L. 1991; amd. Sec. 5, Ch. 407, L. 1993; amd. Sec. 1, Ch. 194, L. 1997.

<General Materials (GM) - References, Annotations, or Tables>

NOTES, REFERENCES, AND ANNOTATIONS

Compiler's Comments

1997 Amendment: Chapter 194 in (10)(c), at end after "42 U.S.C. 3607(b)(2)(C) and", substituted "(b)(3) through (b)(5), as those provisions read on March 31, 1996" for "(3) and 24 CFR 100.304, as those sections read on October 1, 1989"; and made minor changes in style.

1993 Amendment: Chapter 407 throughout section substituted "disability" for "handicap" and references to a person with a disability for references to a handicapped person; in (1)(c), (7)(a), and (8) inserted "marital status"; and made minor changes in style.

1991 Amendments: Chapter 328 in (10)(c) substituted reference to 42 U.S.C. 3607(b)(2)(C) and (3) for reference to 42 U.S.C. 3605(b)(2)(C) and (3). Amendment effective April 4, 1991.

Chapter 454 in (1)(a), (1)(b), (1)(c), and (1)(d), after "sex", inserted "marital status".

Chapter 801 at beginning of (1) deleted "Except when the distinction is based on reasonable grounds" and after "or" inserted "for any"; in (1)(c), before "inquiry", deleted "written or oral", after "inquiry" deleted "or record", after "age" inserted "familial status", and after "property" inserted final clause concerning purpose to discriminate on basis of prohibited category; in (1)(d), after "unavailable", inserted "or deny"; inserted (1)(e) establishing as unlawful practice representation that housing or property is unavailable for inspection, sale, or rent because of sex, marital status, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin; inserted (1)(f) establishing as unlawful practice inducing or attempting to induce for profit the sale or rental of housing or property by representations regarding entry or prospective entry into neighborhood of persons of particular sex, marital status, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin; in (2) substituted "owner" for "landlord" and at end, after "subsection (1)", inserted provision restricting number of sleeping rooms rented; inserted (4) establishing as unlawful discriminatory practice discrimination in sale, rental, or availability of housing or property, in terms or privileges of sale or rental, or in provision of services or facilities in housing or property because of physical or mental handicap of buyer, lessee, or renter, of person residing in housing or property after sale, or of person associated with buyer, lessee, or renter; inserted (5) outlining what is included in discrimination because of physical or mental handicap; inserted (6) defining covered multifamily housing accommodation; inserted (7) establishing as unlawful discriminatory practice for person whose business includes engaging in residential real estate-related transactions discrimination because of sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin in making transaction available or in conditions of transaction and defining residential real estate-related transaction; inserted (8) establishing as unlawful discriminatory practice denial of access to or membership or participation in particular service, organization, or facility relating to selling, leasing, or renting housing or property or discrimination in terms or conditions of access, membership, or participation because of sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin; inserted (9) establishing as unlawful discriminatory practice coercion, intimidation, threat, or interference with exercise or enjoyment of granted or protected housing accommodation or property right; in (11) substituted reference to subsection (1) for "this section"; and made minor changes in style.

Preambles: The preamble attached to Ch. 328, L. 1991, provided: "WHEREAS, section 49-2-305, MCA, of the Human Rights Act prohibits discrimination in housing; and

WHEREAS, that section exempts "housing for older persons" from the prohibitions against discrimination in housing based upon age and familial status; and

WHEREAS, the definition of "housing for older persons" refers to 42 U.S.C. 3605(b)(2)(C) and (3) of the federal Fair Housing Act; and

WHEREAS, this citation is incorrect and should read 42 U.S.C. 3607(b)(2)(C) and (3), which define "housing for older persons" under federal law.

THEREFORE, it is appropriate for the Legislature to amend section 49-2-305, MCA, to correct this citation error."

The preamble attached to Ch. 454, L. 1991, provided: "WHEREAS, Article II, section 4, of the Montana Constitution prohibits discrimination by the state or any person, firm, corporation, or institution against any person on account of social condition; and

WHEREAS, the Legislature has previously defined social condition to include marital status; and

WHEREAS, an individual may be subjected to discrimination because of marital status in the enjoyment of public accommodations and access to housing.

THEREFORE, it is appropriate for the Legislature to prohibit such discrimination."

The preamble attached to Ch. 801, L. 1991, provided: "WHEREAS, the Legislature has previously included housing discrimination as a subject of discrimination law in the Montana Human Rights Act; and

WHEREAS, the housing discrimination laws in the Montana Human Rights Act were modeled after the federal Fair Housing Act of 1968; and

WHEREAS, in 1988, Congress substantially amended the federal Fair Housing Act, enforced by the Department of Housing and Urban Development; and

WHEREAS, the Montana Commission for Human Rights processes housing discrimination complaints in Montana that allege a violation of both the Montana Human Rights Act and the federal Fair Housing Act; and

WHEREAS, the Montana Commission for Human Rights receives a substantial portion of its funding from contracts with the Department of Housing and Urban Development for processing federal housing discrimination cases; and

WHEREAS, after January 13, 1992, the Department of Housing and Urban Development will no longer contract with any state fair housing agency that does not enforce a state law providing rights and remedies substantially equivalent to those provided by the federal Fair Housing Act; and

WHEREAS, the rights and remedies provided by the Montana Human Rights Act are not presently substantially equivalent to those provided by the federal Fair Housing Act.

THEREFORE, it is appropriate for the Legislature to amend the housing discrimination laws in the Montana Human Rights Act to maintain substantial equivalency with the federal Fair Housing Act."

Retroactive Applicability: Section 2, Ch. 328, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to causes of action arising on or after October 1, 1989."

1989 Amendment: In (1)(a), (1)(b), and (1)(d), after "age", inserted "familial status"; inserted (4) exempting particular housing for older persons from prohibitions against age and familial status discrimination provisions; inserted (5) extending exemption from prohibition against age and familial status discrimination provisions to certain rooms or units where owner is

in residence; and inserted (6) defining familial status.

Preamble: The preamble to Ch. 503, L. 1989, provided: "WHEREAS, Article II, section 4, of the Montana Constitution prohibits discrimination by the state or any person, firm, corporation, or institution against any person on account of social condition; and

WHEREAS, Article II, section 15, of the Montana Constitution confers upon children the same rights as those conferred upon adults, with the exception of rights precluded by laws that enhance the protection of persons under 18 years of age; and

WHEREAS, persons or families with children have been denied housing opportunities for reasons unrelated to public safety, public health, or the protection of children.

THEREFORE, it is appropriate that the Legislature enact a law to enhance the protection of children by prohibiting the denial of housing to persons or families with children."

1981 Amendment: Inserted subsection (1)(d) making an unlawful discriminatory practice the refusal to negotiate a sale or to make a housing accommodation property unavailable because of sex, race, creed, religion, age, physical or mental handicap, color, or national origin; substituted "subsection (1)" for "this section" at the end of (2); added subsection (3) providing that the making, printing, or publishing of a notice, statement, or advertisement indicating a preference, limitation, or discrimination in housing is an unlawful discriminatory practice.

Cross-References

Urban renewal -- discrimination prohibited, 7-15-4207.

Administrative Rules

ARM 24.9.1501 Purpose and scope of rules.

ARM 24.9.1502 Definitions.

ARM 24.9.1503 Exemptions.

ARM 24.9.1506 Conciliation.

ARM 24.9.1507 Representation of charging party.

ARM 24.9.1508 Final disposition.

Case Notes

Housing Discrimination -- Recovery Under Section 1982: Plaintiffs, who were denied rental units because they were African-American, were entitled to compensatory damages for emotional distress in view of overt discrimination against them by the rental unit owners and of plaintiffs' testimony that they suffered emotional distress as a result. Evidence of economic loss or medical evidence of mental or physical symptoms stemming from humiliation need not be submitted to support an award for compensatory damages for humiliation and emotional distress under section 1982. *Johnson v. Hale*, 940 F2d 1192 (9th Cir. 1991). The District Court damage award of \$125 to tenants was reversed as insufficient in *Johnson v. Hale*, 13 F3d 1351 (9th Cir. 1994).

Law Review Articles

A Few New Solutions to a Very Old Problem: How the Fair Housing Act Can Be Improved to Deter Discriminatory Conduct by Real Estate Brokers, Plummer, 47 How. L.J. 163 (2003).

Predatory Lending: Legalized Theft of Home Equity, Judge, 5 Rutgers Race & L. Rev. 293 (2003).

Housing and Hope Symposium, 29 Seton Hall L. Rev. 1461 (1999).

Housing Discrimination and Source of Income: A Tenant's Losing Battle, Johnson-Spratt, 32 Ind. L. Rev. 1 (1999).

Civil Rights--Closing a Loophole in the Fair Housing Act--City of Edmonds v. Oxford House, Inc., 115 S. Ct. 1776 (1995), Casher, 70 Temp. L. Rev. 369 (1997).

The Conflict Between Religious Exercise and Efforts to Eradicate Housing Discrimination Against Nontraditional Couples: Should Free Exercise Protect Landlord Bias?, Johnson, 53 Wash. & Lee L. Rev. 351 (1996).

The Religious Landlord and the Conflict Between Free Exercise Rights and Housing Discrimination Laws--Which Interest Prevails?, Knutson, 47 Hastings L.J. 1669 (1996).

Drawing the Line Between Reasonable Accommodation and Undue Hardship Under the Americans With Disabilities Act: Reducing the Effects of Ambiguity on Small Businesses, Harger, 41 U. Kan. L. Rev. 783 (1993).

The Future of Fair Housing Litigation, Schwemm, 26 J. Marshall L. Rev. 745 (1993).

Collateral References

Civil Rights + 11, 11.5.

14 C.J.S. Supp. Civil Rights §§ 76 through 83, 100, 176.

15 Am. Jur. 2d Civil Rights §§ 249 through 256, 477 through 498.

Marital status: what constitutes illegal discrimination under state statutory prohibition against discrimination in housing accommodations on account of marital status. 33 ALR 4th 964.

Children: refusal to rent residential premises to persons with children as unlawful discrimination. 30 ALR 4th 1187.

Housing: construction and effect of state legislation forbidding discrimination in housing on account of physical handicap. 28 ALR 4th 685.

Rent control: validity and construction of statute or ordinance establishing rent control benefit or rent subsidy for elderly tenants. 5 ALR 4th 922.

Prohibition, under state civil rights laws, of racial discrimination in rental of privately owned residential property. 96 ALR 3d 497.

Suspension or revocation of real-estate broker's license on ground of discrimination. 42 ALR 3d 1099.

Validity and construction of anti-blockbusting regulations as designated to prevent brokers from inducing sales of realty because of actual or rumored entry of racial group in neighborhood. 34 ALR 3d 1432.

Tenants or purchasers of real estate, race or religious belief as permissible consideration in choosing. 14 ALR 2d 153.

Credit applicant: discrimination against credit applicant on basis of marital status under Equal Credit Opportunity Act (15 U.S.C.S. § 1691, et seq.). 55 ALR Fed. 458.

MCA 49-2-305, MT ST 49-2-305

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