



## Montana Legislative Services Division

### Legal Services Office

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December 12, 2007

Representative Margaret Campbell  
P.O. Box 228  
Poplar, Montana 59255

Dear Representative Campbell:

I am writing in response to your request for an analysis of the provisions of House Bill No. 789, enacted as Chapter 180, Laws of 2007. Pursuant to section 1-2-201(1)(a), MCA, House Bill No. 789 became effective on October 1, 2007. The purpose of House Bill No. 789, as indicated by the title of the bill, was to treat a tribal identification card in a similar manner to a state identification card for purposes of certain state laws. The title of an act is presumed to indicate the Legislature's intent. Although the intent of the Legislature must first be determined from the plain meaning of the words used, a court can resort to the history of the statute. Department of Revenue v. Puget Sound Power & Light Co., 179 Mont. 255, 587 P.2d 1282 (1978), Department of Natural Resources and Conservation v. Clark Fork Logging Co., Inc., 198 Mont. 494, 646 P.2d 1207 (1982), and Gaub v. Milbank Ins. Co., 220 Mont. 424, 715 P.2d 443 (1986).

House Bill No. 789 treats a tribal identification card the same as a Montana driver's license, Montana identification card, and certain other documents for the purposes of registering the purchase of a keg of beer; verifying information for the purchase of alcoholic beverages; displaying or selling obscene material to adults only; applying for a concealed weapon permit; recording titles to motor vehicles, trailers, semitrailers, pole trailers, travel trailers, campers, motorboats, personal watercraft, sailboats, snowmobiles, and off-highway vehicles; suspending a driver's license or revoking an individual's driving privileges for altering an identification card to obtain alcohol or authorizing another individual to use the licensee's identification card to obtain alcohol; and obtaining a conservation license, hunting license, or fishing license. In addition, tribal identification card numbers are treated as "personal information" for computer security purposes and reporting breaches of computer security and for the crime of identity theft.

There is no requirement in Montana law that a merchant accept any specific form of identification for the purposes of making retail sales of certain material, such as alcohol, tobacco, or obscene material to persons of a certain age. Montana law merely makes it illegal to misrepresent one's age or to assist another in misrepresenting that person's age in order to obtain the specified material. However, under House Bill No. 789, a tribal identification card is treated the same as a state driver's license, state identification card, or a driver's license issued by another jurisdiction. Therefore, if a merchant accepts one of the statutorily enumerated types of identification for the purpose of verifying an individual's age, the merchant has potential liability for refusing to accept a statutorily equivalent form of identification.

Section 49-1-102(1), MCA, provides that the right to be free from discrimination because of race, creed, religion, color, sex, physical or mental disability, age, or national origin is recognized as

and declared to be a civil right. This right includes but is not limited to the right to obtain and hold employment without discrimination and the right to the full enjoyment of any of the accommodation facilities or privileges of any place of public resort, accommodation, assemblage, or amusement. Section 49-2-101(20), MCA, defines "public accommodation" as a place that caters or offers its services, goods, or facilities to the general public subject only to the conditions and limitations established by law and applicable to all persons. It includes without limitation a public inn, restaurant, eating house, hotel, roadhouse, place where food or alcoholic beverages or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor, tavern, nightclub, trailer park, resort, campground, barbering, cosmetology, electrology, esthetics, or manicuring salon or shop, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, or hospital and all other public amusement and business establishments. "Public accommodation" does not include an institution, club, or place of accommodation that proves that it is by its nature distinctly private. An institution, club, or place of accommodation may not be considered by its nature distinctly private if it has more than 100 members, provides regular meal service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages, directly or indirectly, from or on behalf of nonmembers, for the furtherance of trade or business. A lodge of a recognized national fraternal organization is considered by its nature distinctly private.

Section 49-2-304(1)(a), MCA, provides that except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, agent, or employee of a public accommodation to refuse, withhold from, or deny to a person any of its services, goods, facilities, advantages, or privileges because of sex, marital status, race, age, physical or mental disability, creed, religion, color, or national origin. Section 49-2-304(2), MCA, explicitly extends the same prohibition to entities that have been issued a license to sell beer, wine, and alcoholic beverages under Title 16, chapter 4, MCA. It is my understanding that in order to receive a tribal identification card, the individual must be an enrolled member of a tribe. It is also my understanding that each tribe established criteria including some specified percentage of ancestry in order to be enrolled. Based upon these criteria for receiving a tribal identification card and the state law recognition of those cards, refusing to accept a tribal identification card in a place of public accommodation appears to be a form of racial discrimination unless "reasonable grounds" can be shown for refusing to accept a tribal identification card. Section 49-2-402, MCA, provides that any grounds urged as a "reasonable" basis for an exemption under Title 49, chapter 2, MCA, must be strictly construed. That provision requires a "compelling interest" for the articulated "reasonable basis" for discrimination.

You have indicated that some establishments have declined to accept tribal identification cards because the cards do not contain an expiration date like state driver's licenses. I fail to see how the lack of an expiration date on a tribal identification card is either "reasonable" or compelling. One of the obvious reasons for the expiration of a driver's license is to ensure that the individual still meets the statutory qualifications for licensure. See section 61-5-111(3), MCA. I am unaware of any circumstances that would require an individual to repeatedly qualify for tribal

membership, and therefore, an expiration date for a tribal identification card would be meaningless.

In summary, House Bill No. 789 now requires that tribal identification cards be treated the same as other statutorily recognized forms of identification for certain purposes. The refusal of a place of public accommodation to accept tribal identification cards would require the place of public accommodation to establish a "reasonable" basis for the refusal. In light of the statutory recognition of tribal identification cards, I find it extremely difficult to envision a basis that would meet the strict construction requirement for reasonableness.

I hope that I have adequately addressed your questions. If you have other questions or if I can provide additional information, please feel free to contact me.

Sincerely,



Gregory J. Petesch  
Director of Legal Services

cc: Jennifer Cole