

SENATE BILL NO. 377

Introduced: 02/07/83

Referred to Committee on Judiciary: 02/07/83

Rereferred to Committee on Labor & Employment Relations:
02/08/83

Hearing: 2/17/83

Died in Committee.

1 *Arata* BILL NO. *377*
 2 INTRODUCED BY *Eck*
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE VETERANS
 5 AND DISABLED PERSONS PREFERENCE LAW TO CHANGE THE NATURE OF
 6 THE PREFERENCE AND THE PROCEDURES FOR APPLYING IT; AMENDING
 7 SECTIONS 10-2-201 THROUGH 10-2-206, MCA; AND PROVIDING AN
 8 IMMEDIATE EFFECTIVE DATE."
 9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 11 Section 1. Section 10-2-201, MCA, is amended to read:
 12 "10-2-201. Purpose. The purpose of 10-2-201 through
 13 10-2-206 and [section 7] is to provide for preference of
 14 veterans, their ~~certain dependents and unmarried surviving~~
 15 ~~spouses of veterans,~~ and certain disabled civilians in
 16 initial appointment and to employment in by every public
 17 ~~department and upon all public works of the state of Montana~~
 18 ~~and of any county and city thereof~~ hiring authority."
 19 Section 2. Section 10-2-202, MCA, is amended to read:
 20 "10-2-202. Definitions. For purposes of 10-2-201
 21 through 10-2-206 and [section 7], the following definitions
 22 apply:
 23 (1) "Affected class" means a class of people who
 24 currently suffer employment discrimination or suffer from
 25 the continuing effects of past discrimination based on race,

1 sex, or physical or mental handicap.
 2 (2) "Certain dependents of a veteran" means:
 3 (a) a spouse of a disabled veteran who is unable to
 4 use his preference as a result of a service-connected
 5 disability; or
 6 (b) an unmarried surviving spouse or other dependent
 7 of a veteran who died as a result of a service-connected
 8 disability or who died while on active duty.
 9 (3) "Department" means the department of
 10 administration provided for in 2-15-1001.
 11 (4) "Disability" means a physical or mental condition
 12 that limits a major life activity such as walking, seeing,
 13 hearing, or speaking and that limits the person's ability to
 14 find and hold employment.
 15 (5) "Disabled person" means:
 16 (a) a veteran having a service-connected disability as
 17 determined by the veterans' administration of the United
 18 States; or
 19 (b) a civilian having a disability as determined by
 20 the department of social and rehabilitation services.
 21 (6) "Initial appointment to employment" is the act by
 22 a public hiring authority of hiring a person not currently
 23 employed with that authority.
 24 (7) "Preferred person" means:
 25 (a) a veteran;

1 (b) a disabled person; or
 2 (c) certain dependents of veterans.
 3 (8) "Public hiring authority" means:
 4 (a) a department, office, board, bureau, commission,
 5 agency, or other instrumentality of the state of Montana; or
 6 (b) a county, city, town, school district, or other
 7 unit of local government or an instrumentality of local
 8 government.
 9 (9) "Reemployment preference" means a preference for
 10 employment granted under established policies of a public
 11 hiring authority, including a collective bargaining
 12 agreement, because a person's previous employment by the
 13 public hiring authority was terminated as a result of a
 14 reduction in force or reorganization.
 15 (10) The term "veterans" "Veteran" means a persons
 16 person:
 17 (a) who served in the armed forces of the United
 18 States in time of war or declared national emergency and who
 19 have has been separated from service upon under honorable
 20 conditions other-than-dishonorable; or
 21 (b) who after January 31, 1955:
 22 (i) served on active military duty for more than 180
 23 days or were was discharged or released because of a
 24 service-connected disability; and
 25 (ii) were was honorably discharged.

1 (2)(11) The---term---"war "War or declared national
 2 emergency" includes:
 3 (a)---The-Civil-War
 4 (b)---The-Spanish-American-War
 5 (c)---The-Philippine-insurrection
 6 (d)(a) World War I, between April 6, 1917, and
 7 November 11, 1918, both dates inclusive;
 8 (e)(b) World War II, between September 16, 1940, and
 9 December 31, 1946, both dates inclusive;
 10 (f)(c) The Korean conflict, military expedition, or
 11 police action, between June 26, 1950, and January 31, 1955,
 12 both dates inclusive; and
 13 (g)(d) The Vietnam conflict between August 5, 1964,
 14 and May 7, 1975, both dates inclusive.
 15 (3)---The---term---"surviving-spouse"-means-an-unremarried
 16 surviving-spouse-of-a-veteran
 17 (4)---The-word-"percent"-means-percent-of-the-total
 18 aggregate-points-of-the-examination-referred-to.
 19 Section 3. Section 10-2-203, MCA, is amended to read:
 20 "10-2-203. Preference in initial appointment and to
 21 employment. (1)---in---every---public---department-and-upon-all
 22 public-works-of-the-state-of-Montana-and-of---any---county---or
 23 city---thereof---the---following Every public hiring authority
 24 shall be-preferred-for give preferred persons preference as
 25 provided in 10-2-204 in initial appointment and to

employment--veterans--their--spouses--and--surviving--spouses--
and--the--other--dependents--of--disabled--veterans--and--disabled
civilians--recommended--by--the--rehabilitative--services
division--of--the--department--of--social--and--rehabilitation
services.

(2)--Age--loss--of--limb--or--other--physical--impairment
which--does--not--in--fact--incapacitate--does--not--disqualify--any
disabled--veteran--or--civilian--provided--he--or--she--possesses
the--business--capacity--competency--and--education--to
discharge--the--duties--of--the--position--involved.

(3)--Those--of--the--above--described--veterans--who--have
disabilities--admitted--by--the--veterans--administration--of--the
United--States--to--have--been--incurred--in--service--in--any--of--the
war--military--expeditions--or--police--actions--whenever--such
disabilities--do--not--in--fact--incapacitate--shall--be--given
preference--in--employment--over--other--veterans."

Section 4. Section 10-2-204, MCA, is amended to read:

"10-2-204. Credit--for--examination Administration of
preference. (1) When--written--or--oral--examinations--are
required--for--employment--disabled--veterans--and--their
spouses--their--surviving--spouses--and--other--dependents--shall
have--added--to--their--examination--ratings--a--credit--of--10
points--All--other--veterans--their--spouses--surviving
spouses--and--dependents--shall--have--added--to--their
examination--ratings--a--credit--of--5--points. Whenever scored

procedures are used to establish an employment list and a
preferred person attains a passing score, 10 percentage
points must be added to the score of a disabled person and 5
percentage points must be added to the score of all other
preferred persons. Such percentage points may not be used to
appoint a preferred person over a substantially equally
qualified nonpreferred person who is a member of an affected
class if there is evidence demonstrating past or present
underutilization of the affected class by the public hiring
authority involved.

(2) The fact that an applicant has claimed a veterans' ⁴
credit preference may not be made known to the examiners
until ratings of all applicants have been recorded, after
which such credits shall be added to the examination rating
and the records shall show the examination rating and the
veterans' credit preference.

(3) The--benefits--of--this--section--are--in--addition--to
and--not--in--derogation--of--the--preference--in--appointment--and
employment--or--both--given--by--10-2-203. Whenever scored
procedures are not used, a preferred person must be
appointed to the position over nonpreferred persons of
substantially equal qualifications except when the
nonpreferred person is a member of an affected class and
there is evidence demonstrating past or present
underutilization of the affected class by the public hiring

1 authority involved. Disabled persons must be appointed to
 2 the position over other preferred persons of substantially
 3 equal qualifications.

4 (4) A preferred person need not be appointed to the
 5 position over a nonpreferred person who is entitled to claim
 6 reemployment preference except when the preferred person is
 7 also entitled to claim reemployment preference."

8 Section 5. Section 10-2-205, MCA, is amended to read:

9 "10-2-205. Eligibility -- duty of preferred person.

10 (1) None of the benefits of 10-2-201 through 10-2-206 and
 11 [section 7] accrue to any person who refused to serve on
 12 active duty in the military service to which attached or to
 13 take up arms in the defense of the United States.

14 (2) No person who has not been a resident of Montana
 15 for at least 1 year immediately preceding an appointment is
 16 entitled to such preference. It is a preferred person's duty
 17 to establish his eligibility for preference and to make his
 18 preference known to the public hiring authority.

19 (3) For city or county employment, no preference will
 20 be granted unless an applicant under 10-2-201 through
 21 10-2-206 is also a resident of the city or town or county in
 22 which employment is sought. A retired member of the armed
 23 forces who is receiving a pension is not eligible for
 24 preference unless the retired person is a disabled person."

25 Section 6. Section 10-2-206, MCA, is amended to read:

1 "10-2-206. Enforcement of preference. (1) Any
 2 preferred person entitled to preference in 10-2-201 through
 3 10-2-206 who has applied for any appointment or employment
 4 upon public works of the state of Montana or any county and
 5 city thereof or in any public department of the state and
 6 who has been denied employment or appointment and feels that
 7 the spirit of 10-2-201 through 10-2-206 has been violated
 8 and that such person is in fact qualified physically and
 9 mentally and possesses business capacity, competency and
 10 education to discharge the duties of the position applied
 11 for may petition by not been accorded his rights under
 12 10-2-201 through 10-2-206 and [section 7] may, within 15
 13 days of receipt of notice of the adverse decision, make a
 14 written request for appeal to the public hiring authority to
 15 which employment application was made. The public hiring
 16 authority shall provide written explanation and shall
 17 deliver this explanation to the preferred person within 30
 18 days of the date of his request for appeal.

19 (2) Within 30 days after the delivery date of the
 20 written explanation, the preferred person may file a
 21 verified petition with the district court of the state of
 22 Montana in the county in which the work is to be performed
 23 application is filed. The petition shall set forth the facts
 24 of the application, qualifications, competency and such
 25 person's honorable discharge or other qualifications

1 warranting the applicant to preference under 10-2-201
2 through 10-2-206 ~~and [section 7]~~.

3 (3) Upon filing of such petition, any judge in the
4 court shall issue an order ~~to show cause~~ to the ~~appointing~~ public
5 ~~public hiring~~ authority directing the ~~appointing~~ public
6 ~~hiring~~ authority to appear in the court at a specified time
7 and place, not less than 5 10 or more than ~~10~~ 20 days after
8 the filing of the verified petition, to show cause, if any
9 exists, why the veteran or person entitled to preference
10 should not be employed by the ~~appointing public hiring~~
11 authority.

12 (4) The district court has jurisdiction upon the
13 proper showings to issue its order directing and ordering
14 the ~~appointing public hiring~~ authority to comply with this
15 law in giving the preference provided for.

16 (5) ~~The Montana Rules of Evidence and the Montana~~
17 ~~Rules of Civil Procedure are applicable to all court~~
18 ~~proceedings brought under this section.~~

19 **NEW SECTION.** Section 7. Rulemaking authority. The
20 department must adopt rules to implement 10-2-201 through
21 10-2-206.

22 **NEW SECTION.** Section 8. Codification instruction.
23 Section 7 is intended to be codified as an integral part of
24 Title 10, chapter 2, part 2, and the provisions of Title 10,
25 chapter 2, part 2, apply to section 7.

1 **NEW SECTION.** Section 9. Effective date. This act is
2 effective on passage and approval.

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