

HOUSE BILL NO. 2

Special Session

Introduced: 12/12/83

Referred to Committee on Judiciary: 12/12/83

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1 HOUSE BILL NO. 2
2 INTRODUCED BY RAMIREZ
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE EMPLOYMENT
5 PREFERENCE PROVIDED TO VETERANS, THEIR ELIGIBLE SPOUSES AND
6 DEPENDENTS, AND DISABLED CIVILIANS; PROVIDING THAT THE
7 PREFERENCE APPLIES ONLY TO INITIAL HIRING; DEFINING "INITIAL
8 HIRING"; AMENDING SECTIONS 10-2-201 THROUGH 10-2-206,
9 49-1-102, 49-2-303, 49-2-308, 49-3-103, 49-3-201, AND
10 49-4-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND
11 AN APPLICABILITY DATE."
12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
14 Section 1. Section 10-2-201, MCA, is amended to read:
15 "10-2-201. Purpose. The purpose of 10-2-201 through
16 10-2-206 is to provide for preference of veterans, their
17 dependents and unremarried surviving spouses, and certain
18 disabled civilians in ~~appointment and employment~~ initial
19 hiring in every public department and upon all public works
20 of the state of Montana and of any county and city thereof."
21 Section 2. Section 10-2-202, MCA, is amended to read:
22 "10-2-202. Definitions. For purposes of 10-2-201
23 through 10-2-206, the following definitions apply:
24 (1) ~~The term "veterans"~~ "Veterans" means persons:
25 (a) who served in the armed forces of the United

1 States in time of war or declared national emergency and who
2 have been separated from service upon conditions other than
3 dishonorable; or
4 (b) who after January 31, 1955:
5 (i) served on active military duty for more than 180
6 days or were discharged or released because of a
7 service-connected disability; and
8 (ii) were honorably discharged.
9 (2) ~~The term "war"~~ "War or declared national emergency"
10 includes:
11 (a) The Civil War;
12 (b) The Spanish-American War;
13 (c) The Philippine insurrection;
14 (d) World War I, between April 6, 1917, and November
15 11, 1918, both dates inclusive;
16 (e) World War II, between September 16, 1940, and
17 December 31, 1946, both dates inclusive;
18 (f) The Korean conflict, military expedition, or
19 police action, between June 26, 1950, and January 31, 1955,
20 both dates inclusive; and
21 (g) The Vietnam conflict between August 5, 1964, and
22 May 7, 1975, both dates inclusive.
23 (3) ~~The term "surviving~~ "Surviving spouse" means an
24 unremarried surviving spouse of a veteran.
25 (4) (a) "Initial hiring" means a personnel action for

1 which applications are solicited from outside the ranks of
 2 the current employees of:

3 (i) a department, as defined in 2-15-102, for a
 4 position within the executive branch;

5 (ii) a legislative agency, such as the consumer
 6 counsel, environmental quality council, office of the
 7 legislative auditor, legislative council, or office of the
 8 legislative fiscal analyst, for a position within the
 9 legislative branch;

10 (iii) a judicial agency, such as the office of supreme
 11 court administrator, office of supreme court clerk, state
 12 law library, or similar office in a state district court,
 13 for a position within the judicial branch;

14 (iv) a unit, as defined in 20-25-201, for a position
 15 within the Montana university system;

16 (v) the office of commissioner of higher education for
 17 a position within that office;

18 (vi) a city or town for a municipal position, including
 19 a city or municipal court position;

20 (vii) a county for a county position, including a
 21 justice's court position; and

22 (viii) any other political subdivision of the state not
 23 staffed by employees of a city, town, or county for a
 24 position with that political subdivision.

25 (b) A personnel action limited to current employees of

1 a specific public entity identified in subsections (a)(i)
 2 through (a)(viii) of this subsection (4); current employees
 3 in a reduction-in-force pool who have been laid off from a
 4 specific public entity identified in subsections (a)(i)
 5 through (a)(viii) of this subsection (4); or current
 6 participants in a federally authorized employment program is
 7 not an initial hiring.

8 ~~(4)(3)~~ The word "percent" "Percent" means percent of
 9 the total aggregate points of the examination referred to."

10 Section 3. Section 10-2-203, MCA, is amended to read:

11 "10-2-203. Preference in ~~appointment and employment~~
 12 initial hiring. (1) In every public department and upon all
 13 public works of the state of Montana and of any county or
 14 city thereof, the following shall be preferred for
 15 ~~appointment and employment~~ initial hiring: veterans, their
 16 spouses and surviving spouses, and the other dependents of
 17 disabled veterans and disabled civilians recommended by the
 18 rehabilitative services division of the department of social
 19 and rehabilitation services.

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

25 (3) Those of the above-described veterans who have

1 disabilities admitted by the veterans administration of the
 2 United States to have been incurred in service in any of the
 3 wars, military expeditions, or police actions, whenever such
 4 disabilities do not in fact incapacitate, shall be given
 5 preference in employment initial hiring over other
 6 veterans."

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

8 "10-2-204. Credit for examination. (1) When written or
 9 oral examinations are required for employment initial
 10 hiring, disabled veterans and their spouses, their surviving
 11 spouses, and other dependents shall have added to their
 12 examination ratings a credit of 10 points. All other
 13 veterans, their spouses, surviving spouses, and dependents
 14 shall have added to their examination ratings a credit of 5
 15 points.

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

22 (3) The benefits of this section are in addition to
 23 and not in derogation of the preference in ~~appointment and~~
 24 ~~employment or both~~ initial hiring given by 10-2-203."

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

1 "10-2-205. Eligibility. (1) None of the benefits of
 2 10-2-201 through 10-2-206 accrue to any person who refused
 3 to serve on active duty in the military service to which
 4 attached or to take up arms in the defense of the United
 5 States.

6 (2) No person who has not been a resident of Montana
 7 for at least 1 year immediately preceding an ~~appointment~~
 8 initial hiring is entitled to such preference.

9 (3) For city or county employment, no preference will
 10 be granted unless an applicant under 10-2-201 through
 11 10-2-206 is also a resident of the city or town or county in
 12 which employment is sought."

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

14 "10-2-206. Enforcement of preference. Any person
 15 entitled to preference in 10-2-201 through 10-2-206 who has
 16 applied for any ~~appointment or employment~~ initial hiring
 17 upon public works of the state of Montana or any county and
 18 city thereof or in any public department of the state and
 19 who has been denied employment ~~or appointment~~ and feels that
 20 the spirit of 10-2-201 through 10-2-206 has been violated
 21 and that such person is in fact qualified physically and
 22 mentally and possesses business capacity, competency, and
 23 education to discharge the duties of the position applied
 24 for may petition by verified petition the district court of
 25 the state of Montana in the county in which the work is to

1 be performed. The petition shall set forth the facts of the
 2 application, qualifications, competency, and such person's
 3 honorable discharge or other qualifications warranting the
 4 applicant to preference under 10-2-201 through 10-2-206.
 5 Upon filing of such petition, any judge in the court shall
 6 issue an order to show cause to the ~~appointing~~ initial
 7 hiring authority directing the ~~appointing~~ initial hiring
 8 authority to appear in the court at a specified time and
 9 place, not less than 5 or more than 10 days after the filing
 10 of the verified petition, to show cause, if any exists, why
 11 the veteran or person entitled to preference should not be
 12 employed by the ~~appointing~~ initial hiring authority. The
 13 district court has jurisdiction upon the proper showings to
 14 issue its order directing and ordering the ~~appointing~~
 15 initial hiring authority to comply with this law in giving
 16 the preference provided for."

17 Section 7. Section 49-1-102, MCA, is amended to read:
 18 "49-1-102. Freedom from discrimination. The right to
 19 be free from discrimination because of race, creed,
 20 religion, color, sex, physical or mental handicap, age, or
 21 national origin is recognized as and declared to be a civil
 22 right. This right shall include but not be limited to:
 23 (1) the right to obtain and hold employment without
 24 discrimination, except as provided by 10-2-201 through
 25 10-2-206; and

1 (2) the right to the full enjoyment of any of the
 2 accommodation facilities or privileges of any place of
 3 public resort, accommodation, assemblage, or amusement."

4 Section 8. Section 49-2-303, MCA, is amended to read:
 5 "49-2-303. Discrimination in employment. (1) It is an
 6 unlawful discriminatory practice for:

7 (a) an employer to refuse employment to a person, to
 8 bar him from employment, or to discriminate against him in
 9 compensation or in a term, condition, or privilege of
 10 employment because of his race, creed, religion, color, or
 11 national origin or because of his age, physical or mental
 12 handicap, marital status, or sex when the reasonable demands
 13 of the position do or the preference granted by 10-2-201
 14 through 10-2-206 does not require an age, physical or mental
 15 handicap, marital status, or sex distinction;

16 (b) a labor organization or joint labor management
 17 committee controlling apprenticeship to exclude or expel any
 18 person from its membership or from an apprenticeship or
 19 training program or to discriminate in any way against a
 20 member of or an applicant to the labor organization or an
 21 employer or employee because of race, creed, religion,
 22 color, or national origin or because of his age, physical or
 23 mental handicap, marital status, or sex when the reasonable
 24 demands of the program do not require an age, physical or
 25 mental handicap, marital status, or sex distinction;

1 (c) an employer or employment agency to print or
 2 circulate or cause to be printed or circulated a statement,
 3 advertisement, or publication or to use an employment
 4 application which expresses, directly or indirectly, a
 5 limitation, specification, or discrimination as to sex,
 6 marital status, age, physical or mental handicap, race,
 7 creed, religion, color, or national origin or an intent to
 8 make the limitation, unless based upon a bona fide
 9 occupational qualification;

10 (d) an employment agency to fail or refuse to refer
 11 for employment, to classify, or otherwise to discriminate
 12 against any individual because of sex, marital status, age,
 13 physical or mental handicap, race, creed, religion, color,
 14 or national origin, unless based upon a bona fide
 15 occupational qualification.

16 (2) The exceptions permitted in subsection (1) based
 17 on bona fide occupational qualifications shall be strictly
 18 construed."

19 Section 9. Section 49-2-308, MCA, is amended to read:
 20 "49-2-308. Discrimination by the state. It is an
 21 unlawful discriminatory practice for the state or any of its
 22 political subdivisions:

23 (1) to refuse, withhold from, or deny to a person any
 24 local, state, or federal funds, services, goods, facilities,
 25 advantages, or privileges because of race, creed, religion,

1 sex, marital status, color, age, physical or mental
 2 handicap, or national origin, unless based on reasonable
 3 grounds or on the preference provided by 10-2-201 through
 4 10-2-206;

5 (2) to publish, circulate, issue, display, post, or
 6 mail a written or printed communication, notice, or
 7 advertisement which states or implies that any local, state,
 8 or federal funds, services, goods, facilities, advantages,
 9 or privileges of the office or agency will be refused,
 10 withheld from, or denied to a person of a certain race,
 11 creed, religion, sex, marital status, color, age, physical
 12 or mental handicap, or national origin or that the patronage
 13 of a person of a particular race, creed, religion, sex,
 14 marital status, color, age, or national origin or possessing
 15 a physical or mental handicap is unwelcome or not desired or
 16 solicited, unless based on reasonable grounds;

17 (3) to refuse employment to a person, to bar him from
 18 employment, or to discriminate against him in compensation
 19 or in a term, condition, or privilege of employment because
 20 of his political beliefs. However, this prohibition does not
 21 apply to policymaking positions on the immediate staff of an
 22 elected officer of the executive branch provided for in
 23 Article VI, section 1, of the Montana constitution, to the
 24 appointment by the governor of a director of a principal
 25 department provided for in Article VI, section 7, of the

1 Montana constitution, or to the immediate staff of the
2 majority and minority leadership of the Montana
3 legislature."

4 Section 10. Section 49-3-103, MCA, is amended to read:

5 "49-3-103. Permitted distinctions. Nothing in this
6 chapter shall prohibit any public or private employer:

7 (1) from enforcing a differentiation based on marital
8 status, age, or physical or mental handicap;

9 (a) when based on the preference provided in 10-2-201
10 through 10-2-206;

11 (b) when based on a bona fide occupational
12 qualification reasonably necessary to the normal operation
13 of the particular business; or

14 (c) where the differentiation is based on reasonable
15 factors other than age;

16 (2) from observing the terms of a bona fide seniority
17 system or any bona fide employee benefit plan, such as a
18 retirement, pension, or insurance plan, which is not a
19 subterfuge to evade the purposes of this chapter, except
20 that no such employee benefit plan shall excuse the failure
21 to hire any individual; or

22 (3) from discharging or otherwise disciplining an
23 individual for good cause."

24 Section 11. Section 49-3-201, MCA, is amended to read:

25 "49-3-201. Employment of state and local government

1 personnel. (1) State Except as provided in 10-2-201 through
2 10-2-206, state and local government officials and
3 supervisory personnel shall recruit, appoint, assign, train,
4 evaluate, and promote personnel on the basis of merit and
5 qualifications without regard to race, color, religion,
6 creed, political ideas, sex, age, marital status, physical
7 or mental handicap, or national origin.

8 (2) All state and local governmental agencies shall:

9 (a) promulgate written directives to carry out this
10 policy and to guarantee equal employment opportunities at
11 all levels of state and local government;

12 (b) regularly review their personnel practices to
13 assure compliance; and

14 (c) conduct continuing orientation and training
15 programs with emphasis on human relations and fair
16 employment practices.

17 (3) The department of administration shall insure that
18 the entire examination process, including appraisal of
19 qualifications, is free from bias.

20 (4) Appointing authorities shall exercise care to
21 insure utilization of minority group persons."

22 Section 12. Section 49-4-101, MCA, is amended to read:

23 "49-4-101. Discrimination prohibited. It Except as
24 provided in 10-2-201 through 10-2-206, it is unlawful to
25 discriminate, in hiring or employment, against a person

1 because of the physical handicap of such person. There is no
2 discrimination where the nature or extent of the handicap
3 reasonably precludes the performance of the particular
4 employment or where the particular employment may subject
5 the handicapped or his fellow employees to physical harm."

6 NEW SECTION. Section 13. Extension of rulemaking
7 authority. Any existing authority of the department of
8 administration or the commission for human rights to make
9 rules on the subject of the provisions of this act is
10 extended to the provisions of this act.

11 NEW SECTION. Section 14. Severability. If a part of
12 this act is invalid, all valid parts that are severable from
13 the invalid part remain in effect. If a part of this act is
14 invalid in one or more of its applications, the part remains
15 in effect in all valid applications that are severable from
16 the invalid applications.

17 NEW SECTION. Section 15. Effective date —
18 applicability. (1) This act is effective on passage and
19 approval.

20 (2) This act applies only to positions that become
21 open for employment after the effective date of this act.

-End-