

HOUSE BILL NO. 3

Special Session

Introduced: 12/12/83

Referred to Committee on Judiciary: 12/12/83

Hearing: 12/12/83

1 HOUSE BILL NO. 3
2 INTRODUCTION 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 DISABLED CIVILIANS; PROVIDING THAT THE PREFERENCE IS TO BE
7 APPLIED ONLY WHEN REFERRED APPLICANTS ARE SUBSTANTIALLY
8 EQUALLY QUALIFIED WITH NONPREFERRED APPLICANTS; AMENDING
9 SECTIONS 10-2-201 THROUGH 10-2-203, 10-2-206, 49-1-102,
10 49-2-303, 49-2-308, 49-3-103, 49-3-201, AND 49-4-101, MCA;
11 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN
12 APPLICABILITY DATE."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 Section 1. Section 10-2-201, MCA, is amended to read:
16 "10-2-201. Purpose. The purpose of 10-2-201 through
17 10-2-206 is to provide for preference of veterans, their
18 dependents and unmarried surviving spouses, and certain
19 disabled civilians over other applicants with substantially
20 equal qualifications in appointment and employment in every
21 public department and upon all public works of the state of
22 Montana and of any county and city thereof."

23 Section 2. Section 10-2-202, MCA, is amended to read:
24 "10-2-202. Definitions. For purposes of 10-2-201
25 through 10-2-206, the following definitions apply:

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

1 unremarried surviving spouse of a veteran.

2 (4) "Substantially equal qualifications" means the
 3 qualifications of two or more persons among whom the public
 4 employer cannot make a reasonable determination that the
 5 qualifications held by one person are significantly better
 6 suited for the position than the qualifications held by the
 7 other persons.

8 ~~(4)(2)~~ 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 (1) In every public department and upon all public works of
 13 the state of Montana and of any county or city thereof, the
 14 following shall be preferred for appointment and employment
 15 over any nonpreferred applicant with substantially equal
 16 qualifications: veterans, their spouses and surviving
 17 spouses, and the other dependents of disabled veterans and
 18 disabled civilians recommended by the rehabilitative
 19 services division of the department of social and
 20 rehabilitation services.

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

1 (3) Those of the above-described veterans who have
 2 disabilities admitted by the veterans administration of the
 3 United States to have been incurred in service in any of the
 4 wars, military expeditions, or police actions, whenever such
 5 disabilities do not in fact incapacitate, shall be given
 6 preference in employment over other veterans with
 7 substantially equal qualifications."

8 Section 4. Section 10-2-206, MCA, is amended to read:

9 "10-2-206. Enforcement of preference. Any person
 10 entitled to preference in 10-2-201 through 10-2-206 who has
 11 applied for any appointment or employment upon public works
 12 of the state of Montana or any county and city thereof or in
 13 any public department of the state and who has been denied
 14 employment or appointment and feels that the spirit of
 15 10-2-201 through 10-2-206 has been violated and that such
 16 person is in fact substantially equally qualified with the
 17 person selected, qualified physically and mentally, and
 18 possesses business capacity, competency, and education to
 19 discharge the duties of the position applied for may
 20 petition by verified petition the district court of the
 21 state of Montana in the county in which the work is to be
 22 performed. The petition shall set forth the facts of the
 23 application, qualifications, competency, and such person's
 24 honorable discharge or other qualifications warranting the
 25 applicant to preference under 10-2-201 through 10-2-206.

1 Upon filing of such petition, any judge in the court shall
 2 issue an order to show cause to the appointing authority
 3 directing the appointing authority to appear in the court at
 4 a specified time and place, not less than 5 or more than 10
 5 days after the filing of the verified petition, to show
 6 cause, if any exists, why the veteran or person entitled to
 7 preference should not be employed by the appointing
 8 authority. The district court has jurisdiction upon the
 9 proper showings to issue its order directing and ordering
 10 the appointing authority to comply with this law in giving
 11 the preference provided for."

12 Section 5. Section 49-1-102, MCA, is amended to read:
 13 "49-1-102. Freedom from discrimination. The right to
 14 be free from discrimination because of race, creed,
 15 religion, color, sex, physical or mental handicap, age, or
 16 national origin is recognized as and declared to be a civil
 17 right. This right shall include but not be limited to:

18 (1) the right to obtain and hold employment without
 19 discrimination, except as provided by 10-2-201 through
 20 10-2-206; and

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

24 Section 6. Section 49-2-303, MCA, is amended to read:
 25 "49-2-303. Discrimination in employment. (1) It is an

1 unlawful discriminatory practice for:

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

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

21 (c) an employer or employment agency to print or
 22 circulate or cause to be printed or circulated a statement,
 23 advertisement, or publication or to use an employment
 24 application which expresses, directly or indirectly, a
 25 limitation, specification, or discrimination as to sex,

1 marital status, age, physical or mental handicap, race,
2 creed, religion, color, or national origin or an intent to
3 make the limitation, unless based upon a bona fide
4 occupational qualification;

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

11 (2) The exceptions permitted in subsection (1) based
12 on bona fide occupational qualifications shall be strictly
13 construed."

14 Section 7. Section 49-2-308, MCA, is amended to read:

15 "49-2-308. Discrimination by the state. It is an
16 unlawful discriminatory practice for the state or any of its
17 political subdivisions:

18 (1) to refuse, withhold from, or deny to a person any
19 local, state, or federal funds, services, goods, facilities,
20 advantages, or privileges because of race, creed, religion,
21 sex, marital status, color, age, physical or mental
22 handicap, or national origin, unless based on reasonable
23 grounds or on the preference provided by 10-2-201 through
24 10-2-206;

25 (2) to publish, circulate, issue, display, post, or

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

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

24 Section 8. Section 49-3-103, MCA, is amended to read:

25 "49-3-103. Permitted distinctions. Nothing in this

1 chapter shall prohibit any public or private employer:
 2 (1) from enforcing a differentiation based on marital
 3 status, age, or physical or mental handicap;
 4 (a) when based on the preference provided in 10-2-201
 5 through 10-2-206;
 6 (b) when based on a bona fide occupational
 7 qualification reasonably necessary to the normal operation
 8 of the particular business; or
 9 (c) where the differentiation is based on reasonable
 10 factors other than age;
 11 (2) from observing the terms of a bona fide seniority
 12 system or any bona fide employee benefit plan, such as a
 13 retirement, pension, or insurance plan, which is not a
 14 subterfuge to evade the purposes of this chapter, except
 15 that no such employee benefit plan shall excuse the failure
 16 to hire any individual; or
 17 (3) from discharging or otherwise disciplining an
 18 individual for good cause."
 19 Section 9. Section 49-3-201, MCA, is amended to read:
 20 "49-3-201. Employment of state and local government
 21 personnel. (1) State Except as provided in 10-2-201 through
 22 10-2-206, state and local government officials and
 23 supervisory personnel shall recruit, appoint, assign, train,
 24 evaluate, and promote personnel on the basis of merit and
 25 qualifications without regard to race, color, religion,

1 creed, political ideas, sex, age, marital status, physical
 2 or mental handicap, or national origin.
 3 (2) All state and local governmental agencies shall:
 4 (a) promulgate written directives to carry out this
 5 policy and to guarantee equal employment opportunities at
 6 all levels of state and local government;
 7 (b) regularly review their personnel practices to
 8 assure compliance; and
 9 (c) conduct continuing orientation and training
 10 programs with emphasis on human relations and fair
 11 employment practices.
 12 (3) The department of administration shall insure that
 13 the entire examination process, including appraisal of
 14 qualifications, is free from bias.
 15 (4) Appointing authorities shall exercise care to
 16 insure utilization of minority group persons."
 17 Section 10. Section 49-4-101, MCA, is amended to read:
 18 "49-4-101. Discrimination prohibited. ~~It~~ Except as
 19 provided in 10-2-201 through 10-2-206, it is unlawful to
 20 discriminate, in hiring or employment, against a person
 21 because of the physical handicap of such person. There is no
 22 discrimination where the nature or extent of the handicap
 23 reasonably precludes the performance of the particular
 24 employment or where the particular employment may subject
 25 the handicapped or his fellow employees to physical harm."

1 NEW SECTION. Section 11. Extension of rulemaking
2 authority. Any existing authority of the department of
3 administration or the commission for human rights to make
4 rules on the subject of the provisions of this act is
5 extended to the provisions of this act.

6 NEW SECTION. Section 12. Severability. If a part of
7 this act is invalid, all valid parts that are severable from
8 the invalid part remain in effect. If a part of this act is
9 invalid in one or more of its applications, the part remains
10 in effect in all valid applications that are severable from
11 the invalid applications.

12 NEW SECTION. Section 13. Effective date —
13 applicability. (1) This act is effective on passage and
14 approval.

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

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