

HOUSE BILL NO. 4

Special Session

Introduced: 12/12/83

Referred to Committee on Judiciary: 12/1/83

Hearing: 12/12/83

1 HOUSE 4
2 BILL NO.
3
4 INTRODUCED BY RAMIREZ

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE EMPLOYMENT
6 PREFERENCE PROVIDED TO VETERANS, THEIR ELIGIBLE SPOUSES AND
7 DEPENDENTS, AND DISABLED CIVILIANS; PROVIDING THAT SCHOOL
8 DISTRICTS ARE EXEMPT FROM THE PREFERENCE; AMENDING SECTIONS
9 10-2-201, 10-2-203, 10-2-204, 49-1-102, 49-2-303, 49-2-308,
10 49-3-103, 49-3-201, AND 49-4-101, MCA; AND PROVIDING AN
11 IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 10-2-201, MCA, is amended to read:
14 "10-2-201. Purpose. The ~~(1) Except as provided in~~
15 ~~subsection (2), the purpose of 10-2-201 through 10-2-206 is~~
16 to provide for preference of veterans, their dependents and
17 unremarried surviving spouses, and certain disabled
18 civilians in appointment and employment in every public
19 department and upon all public works of the state of Montana
20 and of any county and city thereof.

21 ~~(2) The employment preference provided in 10-2-201~~
22 ~~through 10-2-206 is not applicable to school districts."~~

23 Section 2. Section 10-2-203, MCA, is amended to read:
24 "10-2-203. Preference in appointment and employment.
25 (1) ~~In Except as provided in subsection (4), in every public~~

1 department and upon all public works of the state of Montana
2 and of any county or city thereof, the following shall be
3 preferred for appointment and employment: veterans, their
4 spouses and surviving spouses, and the other dependents of
5 disabled veterans and disabled civilians recommended by the
6 rehabilitative services division of the department of social
7 and rehabilitation services.

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

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

19 ~~(4) The employment preference provided in this section~~
20 ~~is not applicable to school districts."~~

21 Section 3. Section 10-2-204, MCA, is amended to read:
22 "10-2-204. Credit for examination. (1) When written or
23 oral examinations are required for employment ~~for which a~~
24 ~~preference may be claimed,~~ disabled veterans and their
25 spouses, their surviving spouses, and other dependents shall

1 have added to their examination ratings a credit of 10
2 points. All other veterans, their spouses, surviving
3 spouses, and dependents shall have added to their
4 examination ratings a credit of 5 points.

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

11 (3) The benefits of this section are in addition to
12 and not in derogation of the preference in appointment and
13 employment or both given by 10-2-203."

14 Section 4. Section 49-1-102, MCA, is amended to read:

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

20 (1) the right to obtain and hold employment without
21 discrimination, except as provided by 10-2-201 through
22 10-2-206; and

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

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

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

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

23 (c) an employer or employment agency to print or
24 circulate or cause to be printed or circulated a statement,
25 advertisement, or publication or to use an employment

1 application which expresses, directly or indirectly, a
 2 limitation, specification, or discrimination as to sex,
 3 marital status, age, physical or mental handicap, race,
 4 creed, religion, color, or national origin or an intent to
 5 make the limitation, unless based upon a bona fide
 6 occupational qualification;

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

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

16 Section 6. Section 49-2-308, MCA, is amended to read:

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

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

1 10-2-206;

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

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

1 Section 7. Section 49-3-103, MCA, is amended to read:
 2 "49-3-103. Permitted distinctions. Nothing in this
 3 chapter shall prohibit any public or private employer:

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

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

8 (b) when based on a bona fide occupational
 9 qualification reasonably necessary to the normal operation
 10 of the particular business; or

11 (c) where the differentiation is based on reasonable
 12 factors other than age;

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

19 (3) from discharging or otherwise disciplining an
 20 individual for good cause."

21 Section 8. Section 49-3-201, MCA, is amended to read:

22 "49-3-201. Employment of state and local government
 23 personnel. (1) State Except as provided in 10-2-201 through
 24 10-2-206, state and local government officials and
 25 supervisory personnel shall recruit, appoint, assign, train,

1 evaluate, and promote personnel on the basis of merit and
 2 qualifications without regard to race, color, religion,
 3 creed, political ideas, sex, age, marital status, physical
 4 or mental handicap, or national origin.

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

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

9 (b) regularly review their personnel practices to
 10 assure compliance; and

11 (c) conduct continuing orientation and training
 12 programs with emphasis on human relations and fair
 13 employment practices.

14 (3) The department of administration shall insure that
 15 the entire examination process, including appraisal of
 16 qualifications, is free from bias.

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

19 Section 9. Section 49-4-101, MCA, is amended to read:

20 "49-4-101. Discrimination prohibited. ~~It~~ Except as
 21 provided in 10-2-201 through 10-2-206, it is unlawful to
 22 discriminate, in hiring or employment, against a person
 23 because of the physical handicap of such person. There is no
 24 discrimination where the nature or extent of the handicap
 25 reasonably precludes the performance of the particular

1 employment or where the particular employment may subject
2 the handicapped or his fellow employees to physical harm."

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

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

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

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

-End-