

HOUSE BILL NO. 5

Special Session

Introduced: 12/12/83

Referred to Committee on Judiciary: 12/12/83

Hearing: 12/12/83

1                    HOUSE      BILL NO.    5  
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; EXEMPTING CERTAIN  
7    POSITIONS FROM APPLICATION OF THE PREFERENCE; AMENDING  
8    SECTIONS 10-2-201 THROUGH 10-2-204, 10-2-206, 49-1-102,  
9    49-2-303, 49-2-308, 49-3-103, 49-3-201, AND 49-4-101, MCA;  
10    AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN  
11    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 in every  
19    ~~public department and upon all public works of applicable~~  
20    ~~position with~~ the state of Montana and of any county and  
21    city thereof."

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

25            (1) ~~The term "veterans"~~ "Veterans" means persons:

1            (a) who served in the armed forces of the United  
2    States in time of war or declared national emergency and who  
3    have been separated from service upon conditions other than  
4    dishonorable; or

5            (b) who after January 31, 1955:

6            (i) served on active military duty for more than 180  
7    days or were discharged or released because of a  
8    service-connected disability; and

9            (ii) were honorably discharged.

10           (2) ~~The term "war"~~ "War or declared national emergency"  
11    includes:

12           (a) The Civil War;

13           (b) The Spanish-American War;

14           (c) The Philippine insurrection;

15           (d) World War I, between April 6, 1917, and November  
16    11, 1918, both dates inclusive;

17           (e) World War II, between September 16, 1940, and  
18    December 31, 1946, both dates inclusive;

19           (f) The Korean conflict, military expedition, or  
20    police action, between June 26, 1950, and January 31, 1955,  
21    both dates inclusive; and

22           (g) The Vietnam conflict between August 5, 1964, and  
23    May 7, 1975, both dates inclusive.

24           (3) ~~The term "surviving"~~ "Surviving spouse" means an  
25    unremarried surviving spouse of a veteran.

1 (4) ~~The word "percent"~~ "Percent" means percent of the  
2 total aggregate points of the examination referred to.

3 (5) "Applicable position" means a permanent position  
4 or seasonal position as defined in 2-18-101 for a state  
5 position or a similar permanent or seasonal position with a  
6 public employer other than the state. However, the term does  
7 not include:

8 (a) a temporary position as defined in 2-18-101 for a  
9 state position or a similar temporary position with a public  
10 employer other than the state;

11 (b) a state or local elected office;

12 (c) employment as an elected official's immediate  
13 secretary, legal advisor, or administrative, legislative, or  
14 other immediate or first-line aide;

15 (d) appointment by an elected official to a body such  
16 as a board, commission, committee, or council;

17 (e) appointment by an elected official to a public  
18 office if the appointment is provided for by law;

19 (f) a department head appointment by the governor or  
20 an executive department head appointment by a mayor, city  
21 manager, county commissioner, or other chief administrative  
22 or executive officer of a local government; or

23 (g) engagement as an independent contractor or  
24 employment by an independent contractor."

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

1 "10-2-203. Preference in appointment and employment.

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

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

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

21 Section 4. 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 in an  
24 applicable position, disabled veterans and their spouses,  
25 their surviving spouses, and other dependents shall have

1 added to their examination ratings a credit of 10 points.  
 2 All other veterans, their spouses, surviving spouses, and  
 3 dependents shall have added to their examination ratings a  
 4 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 5. Section 10-2-206, MCA, is amended to read:  
 15 "10-2-206. Enforcement of preference. Any person  
 16 entitled to preference in 10-2-201 through 10-2-206 who has  
 17 applied for any appointment or employment ~~upon public works~~  
 18 ~~of in an applicable position with~~ the state of Montana or  
 19 any county and city thereof ~~or in any public department of~~  
 20 ~~the state~~ and who has been denied employment or appointment  
 21 and feels that the spirit of 10-2-201 through 10-2-206 has  
 22 been violated and that such person is in fact qualified  
 23 physically and mentally and possesses business capacity,  
 24 competency, and education to discharge the duties of the  
 25 applicable position applied for may petition by verified

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

18 Section 6. Section 49-1-102, MCA, is amended to read:  
 19 "49-1-102. Freedom from discrimination. The right to  
 20 be free from discrimination because of race, creed,  
 21 religion, color, sex, physical or mental handicap, age, or  
 22 national origin is recognized as and declared to be a civil  
 23 right. This right shall include but not be limited to:

24 (1) the right to obtain and hold employment without  
 25 discrimination, except as provided by 10-2-201 through

1 ~~10-2-206~~; and

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

5 Section 7. Section 49-2-303, MCA, is amended to read:

6 "49-2-303. Discrimination in employment. (1) It is an  
7 unlawful discriminatory practice for:

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

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

1 mental handicap, marital status, or sex distinction;

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

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

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

20 Section 8. Section 49-2-308, MCA, is amended to read:

21 "49-2-308. Discrimination by the state. It is an  
22 unlawful discriminatory practice for the state or any of its  
23 political subdivisions:

24 (1) to refuse, withhold from, or deny to a person any  
25 local, state, or federal funds, services, goods, facilities,

1 advantages, or privileges because of race, creed, religion,  
2 sex, marital status, color, age, physical or mental  
3 handicap, or national origin, unless based on reasonable  
4 grounds or on the preference provided by 10-2-201 through  
5 10-2-206;

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

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

1 department provided for in Article VI, section 7, of the  
2 Montana constitution, or to the immediate staff of the  
3 majority and minority leadership of the Montana  
4 legislature."

5 Section 9. Section 49-3-103, MCA, is amended to read:

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

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

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

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

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

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

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

25 Section 10. Section 49-3-201, MCA, is amended to read:

1 "49-3-201. Employment of state and local government  
2 personnel. (1) ~~State Except as provided in 10-2-201 through~~  
3 ~~10-2-206, state~~ and local government officials and  
4 supervisory personnel shall recruit, appoint, assign, train,  
5 evaluate, and promote personnel on the basis of merit and  
6 qualifications without regard to race, color, religion,  
7 creed, political ideas, sex, age, marital status, physical  
8 or mental handicap, or national origin.

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

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

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

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

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

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

23 Section 11. Section 49-4-101, MCA, is amended to read:

24 "49-4-101. Discrimination prohibited. ~~It Except as~~  
25 ~~provided in 10-2-201 through 10-2-206, it~~ is unlawful to

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

7 NEW SECTION. Section 12. Extension of rulemaking  
8 authority. Any existing authority of the department of  
9 administration or the commission for human rights to make  
10 rules on the subject of the provisions of this act is  
11 extended to the provisions of this act.

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

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

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

-End-