

HOUSE BILL NO. 7

Special Session

Introduced: 12/12/83

Referred to Committee on Judiciary: 12/12/83

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1 HOUSE BILL NO. 7
2 INTRODUCED BY RAMIREZ
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
5 EMPLOYMENT PREFERENCE PROVIDED TO VETERANS, THEIR ELIGIBLE
6 SPOUSES AND DEPENDENTS, AND CERTAIN DISABLED CIVILIANS;
7 PROVIDING THAT THE PREFERENCE IS TO BE APPLIED ONLY IN
8 INITIAL HIRING FOR APPLICABLE POSITIONS AND WHEN PREFERRED
9 APPLICANTS ARE SUBSTANTIALLY EQUALLY QUALIFIED WITH
10 NONPREFERRED APPLICANTS; DEFINING "INITIAL HIRING",
11 "APPLICABLE POSITION", AND "SUBSTANTIALLY EQUAL
12 QUALIFICATIONS"; PROVIDING A LIMITATION ON REMEDIES;
13 AMENDING SECTIONS 10-2-201 THROUGH 10-2-206, 49-1-102,
14 49-2-303, 49-2-308, 49-3-103, 49-3-201, AND 49-4-101, MCA;
15 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN
16 APPLICABILITY DATE."

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
19 Section 1. Section 10-2-201, MCA, is amended to read:
20 "10-2-201. Purpose. The purpose of 10-2-201 through
21 10-2-206 is to provide for preference of veterans, their
22 dependents and unmarried surviving spouses, and certain
23 disabled civilians over other applicants with substantially
24 equal qualifications in appointment and employment initial
25 hiring in every public department and upon all public works

1 of applicable position with the state of Montana and of any
2 county and city thereof."

3 Section 2. Section 10-2-202, MCA, is amended to read:
4 "10-2-202. Definitions. For purposes of 10-2-201
5 through 10-2-206, the following definitions apply:

6 (1) ~~The term "veterans"~~ "Veterans" means persons:
7 (a) who served in the armed forces of the United
8 States in time of war or declared national emergency and who
9 have been separated from service upon conditions other than
10 dishonorable; or

11 (b) who after January 31, 1955:
12 (i) served on active military duty for more than 180
13 days or were discharged or released because of a
14 service-connected disability; and

15 (ii) were honorably discharged.
16 (2) ~~The term "war"~~ "War or declared national emergency"
17 includes:

18 (a) The Civil War;
19 (b) The Spanish-American War;
20 (c) The Philippine insurrection;
21 (d) World War I, between April 6, 1917, and November
22 11, 1918, both dates inclusive;

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

25 (f) The Korean conflict, military expedition, or

1 police action, between June 26, 1950, and January 31, 1955,
2 both dates inclusive; and

3 (9) The Vietnam conflict between August 5, 1964, and
4 May 7, 1975, both dates inclusive.

5 (3) ~~The term "surviving~~ "Surviving spouse" means an
6 unmarried surviving spouse of a veteran.

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

9 (5) "Applicable position" means a permanent position
10 or seasonal position as defined in 2-18-101 for a state
11 position or a similar permanent or seasonal position with a
12 public employer other than the state. However, the term does
13 not include:

14 (a) a temporary position as defined in 2-18-101 for a
15 state position or a similar temporary position with a public
16 employer other than the state;

17 (b) a state or local elected office;

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

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

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

25 (f) a department head appointment by the governor or

1 an executive department head appointment by a mayor, city
2 manager, county commissioner, or other chief administrative
3 or executive officer of a local government;

4 (g) employment with a school district; or

5 (h) engagement as an independent contractor or
6 employment by an independent contractor.

7 (6) (a) "Initial hiring" means a personnel action for
8 which applications are solicited from outside the ranks of
9 the current employees of:

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

12 (ii) a legislative agency, such as the consumer
13 counsel, environmental quality council, office of the
14 legislative auditor, legislative council, or office of the
15 legislative fiscal analyst, for a position within the
16 legislative branch;

17 (iii) a judicial agency, such as the office of supreme
18 court administrator, office of supreme court clerk, state
19 law library, or similar office in a state district court,
20 for a position within the judicial branch;

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

23 (v) the office of commissioner of higher education for
24 a position within that office;

25 (vi) a city or town for a municipal position, including

1 a city or municipal court position;
 2 (vii) a county for a county position, including a
 3 justice's court position; and
 4 (viii) any other political subdivision of the state not
 5 staffed by employees of a city, town, or county for a
 6 position with that political subdivision.
 7 (b) A personnel action limited to current employees of
 8 a specific public entity identified in subsections (a)(i)
 9 through (a)(viii) of this subsection (6), current employees
 10 in a reduction-in-force pool who have been laid off from a
 11 specific public entity identified in subsections (a)(i)
 12 through (a)(viii) of this subsection (6), or current
 13 participants in a federally authorized employment program is
 14 not an initial hiring.
 15 (7) "Substantially equal qualifications" means the
 16 qualifications of two or more persons among whom the public
 17 employer cannot make a reasonable determination that the
 18 qualifications held by one person are significantly better
 19 suited for the position than the qualifications held by the
 20 other persons."
 21 Section 3. Section 10-2-203, MCA, is amended to read:
 22 "10-2-203. Preference in ~~appointment and employment~~
 23 initial hiring. (1) In every ~~public department and upon all~~
 24 public works of applicable position with the state of
 25 Montana and of any county or city thereof, the following

1 shall be preferred for ~~appointment and employment~~ initial
 2 hiring over any nonpreferred applicant with substantially
 3 equal qualifications: veterans, their spouses and surviving
 4 spouses, and the other dependents of disabled veterans and
 5 disabled civilians recommended by the rehabilitative
 6 services division of the department of social and
 7 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 applicable 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 initial hiring over other veterans
 19 with substantially equal qualifications."

20 Section 4. Section 10-2-204, MCA, is amended to read:
 21 "10-2-204. Credit for examination. (1) When written or
 22 oral examinations are required for employment initial hiring
 23 in an applicable position, disabled veterans and their
 24 spouses, their surviving spouses, and other dependents shall
 25 have added to their examination ratings a credit of 10

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

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

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

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

14 "10-2-205. Eligibility. (1) None of the benefits of
15 10-2-201 through 10-2-206 accrue to any person who refused
16 to serve on active duty in the military service to which
17 attached or to take up arms in the defense of the United
18 States.

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

22 (3) For city or county employment, no preference will
23 be granted unless an applicant under 10-2-201 through
24 10-2-206 is also a resident of the city or town or county in
25 which employment is sought."

1 Section 6. Section 10-2-206, MCA, is amended to read:
2 "10-2-206. Enforcement of preference. (1) Any person
3 entitled to preference in 10-2-201 through 10-2-206 who has
4 applied for any ~~appointment or employment upon public works~~
5 of initial hiring in an applicable position with the state
6 of Montana or any county and city thereof or in any public
7 department of the state and who has been denied employment
8 ~~or appointment~~ and feels that the spirit of 10-2-201 through
9 10-2-206 has been violated and that such person is in fact
10 substantially equally qualified with the person selected,
11 qualified physically and mentally, and possesses business
12 capacity, competency, and education to discharge the duties
13 of the applicable position applied for may petition by
14 verified petition the district court of the state of Montana
15 in the county in which the work is to be performed. The
16 petition shall set forth the facts of the application,
17 qualifications, competency, and such person's honorable
18 discharge or other qualifications warranting the applicant
19 to preference under 10-2-201 through 10-2-206. Upon filing
20 of such petition, any judge in the court shall issue an
21 order to show cause to the ~~appointing~~ initial hiring
22 authority directing the ~~appointing~~ initial hiring authority
23 to appear in the court at a specified time and place, not
24 less than 5 or more than 10 days after the filing of the
25 verified petition, to show cause, if any exists, why the

1 veteran or person entitled to preference should not be
 2 employed by the appointing initial hiring authority. The
 3 district court has jurisdiction upon the proper showings to
 4 issue its order directing and ordering the appointing
 5 initial hiring authority to comply with this law in giving
 6 the preference provided for.

7 (2) In ordering relief under subsection (1), a court
 8 may not grant an award of backpay."

9 Section 7. Section 49-1-102, MCA, is amended to read:
 10 "49-1-102. Freedom from discrimination. The right to
 11 be free from discrimination because of race, creed,
 12 religion, color, sex, physical or mental handicap, age, or
 13 national origin is recognized as and declared to be a civil
 14 right. This right shall include but not be limited to:

15 (1) the right to obtain and hold employment without
 16 discrimination, except as provided by 10-2-201 through
 17 10-2-206; and

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

21 Section 8. Section 49-2-303, MCA, is amended to read:

22 "49-2-303. Discrimination in employment. (1) It is an
 23 unlawful discriminatory practice for:

24 (a) an employer to refuse employment to a person, to
 25 bar him from employment, or to discriminate against him in

1 compensation or in a term, condition, or privilege of
 2 employment because of his race, creed, religion, color, or
 3 national origin or because of his age, physical or mental
 4 handicap, marital status, or sex when the reasonable demands
 5 of the position do or the preference granted by 10-2-201
 6 through 10-2-206 does not require an age, physical or mental
 7 handicap, marital status, or sex distinction;

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

18 (c) an employer or employment agency to print or
 19 circulate or cause to be printed or circulated a statement,
 20 advertisement, or publication or to use an employment
 21 application which expresses, directly or indirectly, a
 22 limitation, specification, or discrimination as to sex,
 23 marital status, age, physical or mental handicap, race,
 24 creed, religion, color, or national origin or an intent to
 25 make the limitation, unless based upon a bona fide

1 occupational qualification;

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

8 (2) The exceptions permitted in subsection (1) based
9 on bona fide occupational qualifications shall be strictly
10 construed."

11 Section 9. Section 49-2-308, MCA, is amended to read:

12 "49-2-308. Discrimination by the state. It is an
13 unlawful discriminatory practice for the state or any of its
14 political subdivisions:

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

22 (2) to publish, circulate, issue, display, post, or
23 mail a written or printed communication, notice, or
24 advertisement which states or implies that any local, state,
25 or federal funds, services, goods, facilities, advantages,

1 or privileges of the office or agency will be refused,
2 withheld from, or denied to a person of a certain race,
3 creed, religion, sex, marital status, color, age, physical
4 or mental handicap, or national origin or that the patronage
5 of a person of a particular race, creed, religion, sex,
6 marital status, color, age, or national origin or possessing
7 a physical or mental handicap is unwelcome or not desired or
8 solicited, unless based on reasonable grounds;

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

21 Section 10. Section 49-3-103, MCA, is amended to read:
22 "49-3-103. Permitted distinctions. Nothing in this
23 chapter shall prohibit any public or private employer:

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

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

3 (b) when based on a bona fide occupational
4 qualification reasonably necessary to the normal operation
5 of the particular business; or

6 (c) where the differentiation is based on reasonable
7 factors other than age;

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

14 (3) from discharging or otherwise disciplining an
15 individual for good cause."

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

17 "49-3-201. Employment of state and local government
18 personnel. (1) State Except as provided in 10-2-201 through
19 10-2-206, state and local government officials and
20 supervisory personnel shall recruit, appoint, assign, train,
21 evaluate, and promote personnel on the basis of merit and
22 qualifications without regard to race, color, religion,
23 creed, political ideas, sex, age, marital status, physical
24 or mental handicap, or national origin.

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

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

4 (b) regularly review their personnel practices to
5 assure compliance; and

6 (c) conduct continuing orientation and training
7 programs with emphasis on human relations and fair
8 employment practices.

9 (3) The department of administration shall insure that
10 the entire examination process, including appraisal of
11 qualifications, is free from bias.

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

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

15 "49-4-101. Discrimination prohibited. ~~It~~ Except as
16 provided in 10-2-201 through 10-2-206, it is unlawful to
17 discriminate, in hiring or employment, against a person
18 because of the physical handicap of such person. There is no
19 discrimination where the nature or extent of the handicap
20 reasonably precludes the performance of the particular
21 employment or where the particular employment may subject
22 the handicapped or his fellow employees to physical harm."

23 NEW SECTION. Section 13. Extension of rulemaking
24 authority. Any existing authority of the department of
25 administration or the commission for human rights to make

1 rules on the subject of the provisions of this act is
2 extended to the provisions of this act.

3 NEW SECTION. Section 14. Severability. If a part of
4 this act is invalid, all valid parts that are severable from
5 the invalid part remain in effect. If a part of this act is
6 invalid in one or more of its applications, the part remains
7 in effect in all valid applications that are severable from
8 the invalid applications.

9 NEW SECTION. Section 15. Effective date --
10 applicability. (1) This act is effective on passage and
11 approval.

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

-End-