

HOUSE BILL NO. 241

INTRODUCED BY SPAETH, THAYER, HOLLIDAY, POULSEN,
COBB, BOYLAN, RASMUSSEN, HARP, DONALDSON, THOMAS,
MERCER, MAZUREK, MANUEL

IN THE HOUSE

JANUARY 16, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FEBRUARY 13, 1987 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 14, 1987 PRINTING REPORT.

FEBRUARY 16, 1987 SECOND READING, DO PASS AS AMENDED.

FEBRUARY 17, 1987 ENGROSSING REPORT.

FEBRUARY 18, 1987 THIRD READING, PASSED.
AYES, 72; NOES, 26.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 19, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

MARCH 26, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 30, 1987 SECOND READING, CONCURRED IN AS
AMENDED.

ON MOTION, RULES SUSPENDED TO PLACE
BILL ON THIRD READING THIS DAY.

THIRD READING, CONCURRED IN.
AYES, 50; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 7, 1987

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS NOT
CONCURRED IN.

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 9, 1987

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 21, 1987

ON MOTION, CONFERENCE COMMITTEE
DISSOLVED.

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 21, 1987

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 21, 1987

FREE CONFERENCE COMMITTEE REPORTED.

SECOND READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

APRIL 22, 1987

THIRD READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

IN THE SENATE

APRIL 22, 1987

FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 22, 1987

SENT TO ENROLLING.

House BILL NO. 241

INTRODUCED BY *Cathy Doyle* *Roomer* *HARR* *Donaldson* *Thomas* *Mercer* *Wright* *Mannell*

1
2
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A PROCEDURE
5 AND REMEDIES FOR WRONGFUL DISCHARGE; AUTHORIZING ARBITRATION
6 AS AN ALTERNATIVE; ELIMINATING COMMON-LAW REMEDIES;
7 REPEALING SECTIONS 39-2-504 AND 39-2-505, MCA; AND PROVIDING
8 AN APPLICABILITY CLAUSE."
9

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

11 Section 1. Short title. [Sections 1 through 9] may be
12 cited as the "Wrongful Discharge From Employment Act".

13 Section 2. Purpose. [Sections 1 through 9] set forth
14 certain rights and remedies with respect to wrongful
15 discharge. Except as limited in [sections 1 through 9],
16 employment having no specified term may be terminated at the
17 will of either the employer or the employee on notice to the
18 other for any reason considered sufficient by the
19 terminating party. Except as provided in [section 7],
20 [sections 1 through 9] provide the exclusive remedy for a
21 wrongful discharge from employment. [Sections 1 through 9]
22 do not apply to any employment-related personnel action
23 other than wrongful discharge.

24 Section 3. Definitions. In [sections 1 through 9], the
25 following definitions apply:

1 (1) "Constructive discharge" means the voluntary
2 termination of employment by an employee because of a
3 situation created by an act or omission of the employer
4 which an objective, reasonable person would find so
5 intolerable that voluntary termination is the only
6 reasonable alternative. Constructive discharge does not mean
7 voluntary termination because of an employer's refusal to
8 promote the employee or improve wages, responsibilities, or
9 other terms and conditions of employment.

10 (2) "Discharge" means the termination of employment
11 through an action other than retirement, elimination of the
12 job, layoff for lack of work, any other cutback in the
13 number of employees for a legitimate business reason, or
14 resignation not constituting a constructive discharge.
15 Discharge includes constructive discharge.

16 (3) "Employee" means a person who works for another
17 for hire. The term does not include a person who is an
18 independent contractor.

19 (4) "Employment-related personnel action" means an
20 employer's action or failure to act involving discharge or
21 other termination of employment, suspension, removal,
22 failure to recall or rehire, demotion, discipline,
23 promotion, transfer, assignment, pay, or change in pay or
24 benefits.

25 (5) "Good cause" means a legitimate business reason.



1 (6) "Lost wages" means the gross amount of wages that
2 would have been reported to the internal revenue service as
3 gross income on Form W-2 and includes additional
4 compensation deferred at the option of the employee.

5 (7) "Public policy" means a policy in effect at the
6 time of the discharge concerning the public health, safety,
7 or welfare established by constitutional provision, statute,
8 or administrative rule.

9 Section 4. Elements of wrongful discharge. A discharge
10 is wrongful if:

11 (1) it was in retaliation for the employee's refusal
12 to violate public policy or for reporting a violation of
13 public policy; or

14 (2) the employee was employed by the employer for at
15 least 1,000 hours a year for 5 consecutive years immediately
16 preceding the discharge and the discharge was not for good
17 cause.

18 Section 5. Remedies. (1) If an employer has committed
19 a wrongful discharge, the employee may be awarded lost wages
20 for a period not to exceed 2 years from the date of
21 discharge. Interim earnings, including unemployment
22 compensation benefits and amounts earnable with reasonable
23 diligence by the employee, must be deducted from the amount
24 awarded for lost wages.

25 (2) There is no right under any legal theory to

1 damages for wrongful discharge under [sections 1 through 9]
2 for pain and suffering, emotional distress, compensatory
3 damages, punitive damages, or any other form of damages not
4 provided for in subsection (1).

5 Section 6. Limitation of actions. (1) An action under
6 [sections 1 through 9] must be filed within 1 year after the
7 date of discharge.

8 (2) If an employer maintains internal procedures,
9 other than those specified in [section 7], under which an
10 employee may appeal a discharge within the organization
11 structure of the employer, no suit for wrongful discharge
12 may be brought, and the time for bringing the suit under
13 subsection (1) does not begin to run, until the employee has
14 exhausted those procedures.

15 Section 7. Exemptions. [Sections 1 through 9] do not
16 apply to a discharge:

17 (1) that is subject to any other state or federal
18 statute that provides a procedure or remedy for contesting
19 the dispute. Such statutes include those that prohibit
20 discharge for filing complaints, charges, or claims with
21 administrative bodies or that prohibit unlawful
22 discrimination based on race, national origin, sex, age,
23 handicap, and other similar grounds.

24 (2) of an employee covered by a written collective
25 bargaining agreement or a written contract of employment for

1 (5) If a valid offer to arbitrate is made and
2 accepted, arbitration is the exclusive remedy for the
3 wrongful discharge dispute and there is no right to bring or
4 continue a lawsuit under [sections 1 through 8]. The
5 arbitrator's award is final and binding, subject to review
6 of the arbitrator's decision under the provisions of the
7 Uniform Arbitration Act.

8 Section 10. Repealer. Sections 39-2-504 and 39-2-505,
9 MCA, are repealed.

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

16 Section 12. Applicability. This act applies to claims
17 accruing after the effective date of this act and to claims
18 accruing prior to the effective date of this act that have
19 not been filed.

-End-

1 a specific term; or
 2 (3) of an employee who is covered by an employment
 3 policy that provides for final and binding arbitration
 4 before a neutral third party.

5 Section 8. Preemption of common-law remedies.
 6 [Sections 1 through 9] preempt all other rights relating to
 7 and claims seeking redress for wrongful discharge. This
 8 preemption includes but is not limited to rights and claims
 9 at common law or in equity that arise from tort or express
 10 or implied contract, including claims that are based on:

11 (1) public policy;
 12 (2) an implied covenant of good faith and fair
 13 dealing;
 14 (3) intentional or negligent interference with
 15 contractual rights, prospective or otherwise;
 16 (4) intentional or negligent infliction of emotional
 17 distress;
 18 (5) fraud;
 19 (6) defamation;
 20 (7) breach of fiduciary duty;
 21 (8) negligent or intentional misrepresentation;
 22 (9) loss of consortium; or
 23 (10) negligence.

24 Section 9. Arbitration. (1) Under a written agreement
 25 of the parties, a dispute that otherwise could be

1 adjudicated under [sections 1 through 9] may be resolved by
 2 final and binding arbitration as provided in this section.

3 (2) An offer to arbitrate must be in writing and
 4 contain the following provisions:

5 (a) A neutral arbitrator must be selected by mutual
 6 agreement or, in the absence of agreement, as provided in
 7 27-5-211.

8 (b) In the absence of a written agreement to allocate
 9 the arbitrator's fees and the arbitration costs, the
 10 employer and the employee shall each pay one-half of those
 11 fees and costs.

12 (c) The arbitration must be governed by the Uniform
 13 Arbitration Act, Title 27, chapter 5. If there is a conflict
 14 between the Uniform Arbitration Act and [sections 1 through
 15 9], [sections 1 through 9] apply.

16 (d) The arbitrator is bound by [sections 1 through 9].

17 (3) If a complaint is filed under [sections 1 through
 18 9], the offer to arbitrate must be made within 60 days after
 19 service of the complaint and must be accepted in writing
 20 within 30 days after the date the offer is made.

21 (4) A party who makes a valid offer to arbitrate that
 22 is not accepted by the other party and who prevails in an
 23 action under [sections 1 through 9] is entitled as an
 24 element of costs to reasonable attorney fees incurred
 25 subsequent to the date of the offer.

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 241

INTRODUCED BY SPAETH, THAYER, HOLLIDAY, POULSEN,
COBB, BOYLAN, RASMUSSEN, HARP, DONALDSON, THOMAS,
MERCER, MAZUREK, MANUEL

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A PROCEDURE
AND REMEDIES FOR WRONGFUL DISCHARGE; AUTHORIZING ARBITRATION
AS AN ALTERNATIVE; ELIMINATING COMMON-LAW REMEDIES;
REPEALING SECTIONS 39-2-504 AND 39-2-505, MCA; AND PROVIDING
AN APPLICABILITY CLAUSE AND AN EFFECTIVE DATE."

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

Section 1. Short title. [Sections 1 through 9] may be
cited as the "Wrongful Discharge From Employment Act".

Section 2. Purpose. [Sections 1 through 9] set forth
certain rights and remedies with respect to wrongful
discharge. Except as limited in [sections 1 through 9],
employment having no specified term may be terminated at the
will of either the employer or the employee on notice to the
other for any reason considered sufficient by the
terminating party. Except as provided in [section 7],
[sections 1 through 9] provide the exclusive remedy for a
wrongful discharge from employment. [Sections 1 through 9]
do not apply to any employment-related personnel action
other than wrongful discharge.

Section 3. Definitions. In [sections 1 through 9], the
following definitions apply:

(1) "Constructive discharge" means the voluntary
termination of employment by an employee because of a
situation created by an act or omission of the employer
which an objective, reasonable person would find so
intolerable that voluntary termination is the only
reasonable alternative. Constructive discharge does not mean
voluntary termination because of an employer's refusal to
promote the employee or improve wages, responsibilities, or
other terms and conditions of employment.

(2) "Discharge" INCLUDES A CONSTRUCTIVE DISCHARGE AS
DEFINED IN SUBSECTION (1) AND means the termination of
employment through an action other than retirement,
elimination of the job, layoff for lack of work, any other
cutback in the number of employees for a legitimate business
reason, or resignation ~~not--constituting--a--constructive
discharge--Discharge--includes--constructive--discharge.~~

(3) "Employee" means a person who works for another
for hire. The term does not include a person who is an
independent contractor.

(4) "Employment-related personnel action" means an
employer's action or failure to act involving discharge or
other termination of employment, suspension, removal,
failure to recall or rehire, demotion, discipline,

1 promotion, transfer, assignment, pay, or change in pay or
2 benefits.

3 (5) "FRINGE BENEFITS" MEANS THE VALUE OF ANY
4 EMPLOYER-PAID VACATION LEAVE, SICK LEAVE, MEDICAL INSURANCE
5 PLAN, DISABILITY INSURANCE PLAN, LIFE INSURANCE PLAN, AND
6 PENSION BENEFIT PLAN IN FORCE ON THE DATE OF THE
7 TERMINATION.

8 ~~(5)(6)~~ "Good cause" means a-legitimate-business-reason
9 REASONABLE, JOB-RELATED GROUNDS FOR DISMISSAL BASED ON A
10 FAILURE TO SATISFACTORILY PERFORM JOB DUTIES OR DISRUPTION
11 OF THE EMPLOYER'S OPERATION.

12 ~~(6)(7)~~ "Lost wages" means the gross amount of wages
13 that would have been reported to the internal revenue
14 service as gross income on Form W-2 and includes additional
15 compensation deferred at the option of the employee.

16 ~~(7)(8)~~ "Public policy" means a policy in effect at the
17 time of the discharge concerning the public health, safety,
18 or welfare established by constitutional provision, statute,
19 or administrative rule.

20 Section 4. Elements of wrongful discharge. A discharge
21 is wrongful ONLY if:

22 (1) it was in retaliation for the employee's refusal
23 to violate public policy or for reporting a violation of
24 public policy; or

25 (2) the employee was employed by the employer for at

1 least 1,000 hours a year for 5 3 consecutive years
2 immediately preceding the discharge and the discharge was
3 not for good cause; OR

4 (3) THE EMPLOYER VIOLATED THE EXPRESS PROVISIONS OF
5 ITS OWN WRITTEN PERSONNEL POLICY.

6 Section 5. Remedies. (1) If an employer has committed
7 a wrongful discharge, the employee may be awarded lost wages
8 AND FRINGE BENEFITS for a period not to exceed 2 3 years
9 from the date of discharge, TOGETHER WITH INTEREST THEREON.
10 Interim earnings, including unemployment--compensation
11 benefits-and amounts earnable-with-reasonable--diligence--by
12 the--employee THE EMPLOYEE COULD HAVE EARNED WITH REASONABLE
13 DILIGENCE, must be deducted from the amount awarded for lost
14 wages.

15 (2) There is no right under any legal theory to
16 damages for wrongful discharge under [sections 1 through 9]
17 for pain and suffering, emotional distress, compensatory
18 damages, punitive damages, or any other form of damages not,
19 EXCEPT AS provided for in subsection (1).

20 Section 6. Limitation of actions. (1) An action under
21 [sections 1 through 9] must be filed within 1 year after the
22 date of discharge.

23 (2) If an employer maintains WRITTEN internal
24 procedures, other than those specified in [section 7], under
25 which an employee may appeal a discharge within the

1 organization structure of the employer, ~~no-suit-for-wrongful~~
 2 ~~discharge-may-be-brought, and the time for bringing the suit~~
 3 ~~under subsection (1) does not begin to run, until the~~
 4 ~~employee has exhausted those procedures: THE EMPLOYEE SHALL~~
 5 FIRST EXHAUST THOSE PROCEDURES PRIOR TO FILING AN ACTION
 6 UNDER [SECTIONS 1 THROUGH 9]. THE EMPLOYEE'S FAILURE TO
 7 INITIATE OR EXHAUST AVAILABLE INTERNAL PROCEDURES IS A
 8 DEFENSE TO AN ACTION BROUGHT UNDER [SECTIONS 1 THROUGH 9].
 9 IF THE EMPLOYER'S INTERNAL PROCEDURES ARE NOT COMPLETED
 10 WITHIN 90 DAYS FROM THE DATE THE EMPLOYEE INITIATES THE
 11 INTERNAL PROCEDURES, THE EMPLOYEE MAY FILE AN ACTION UNDER
 12 [SECTIONS 1 THROUGH 9] AND FOR PURPOSES OF THIS SUBSECTION
 13 THE EMPLOYER'S INTERNAL PROCEDURES ARE CONSIDERED EXHAUSTED.
 14 THE LIMITATION PERIOD IN SUBSECTION (1) IS TOLLED UNTIL THE
 15 PROCEDURES ARE EXHAUSTED. IN NO CASE MAY THE PROVISIONS OF
 16 THE EMPLOYER'S INTERNAL PROCEDURES EXTEND THE LIMITATION
 17 PERIOD IN SUBSECTION (1) MORE THAN 120 DAYS.

18 Section 7. Exemptions. [Sections 1 through 9] do not
 19 apply to a discharge:

- 20 (1) that is subject to any other state or federal
 21 statute that provides a procedure or remedy for contesting
 22 the dispute. Such statutes include those that prohibit
 23 discharge for filing complaints, charges, or claims with
 24 administrative bodies or that prohibit unlawful
 25 discrimination based on race, national origin, sex, age,

1 handicap, CREED, RELIGION, POLITICAL BELIEF, COLOR, MARITAL
 2 STATUS, and other similar grounds.

3 (2) of an employee covered by a written collective
 4 bargaining agreement or a written contract of employment for
 5 a specific term; or

6 (3) of an employee who is covered by an employment
 7 policy that provides for final and binding arbitration
 8 before a neutral third party.

9 Section 8. Preemption of common-law remedies.
 10 ~~[Sections 1 through 9] preempt all other rights relating to~~
 11 ~~and claims seeking redress for wrongful discharge. This~~
 12 ~~preemption includes but is not limited to rights and claims~~
 13 ~~at common law or in equity that arise from tort or express~~
 14 ~~or implied contract, including claims that are (1) EXCEPT AS~~
 15 PROVIDED IN [SECTIONS 1 THROUGH 9], NO CLAIM FOR WRONGFUL
 16 DISCHARGE MAY ARISE FROM TORT OR EXPRESS OR IMPLIED
 17 CONTRACT, NOR MAY IT BE based on:

- 18 ~~(1)(A)~~ public policy;
 19 ~~(2)(B)~~ an implied covenant of good faith and fair
 20 dealing;
 21 ~~(3)(C)~~ intentional or negligent interference with
 22 contractual rights, prospective or otherwise;
 23 ~~(4)(D)~~ intentional or negligent infliction of
 24 emotional distress;
 25 ~~(5) fraud;~~

1 ~~{6}~~--defamation;
 2 {7}(E) breach of fiduciary duty;
 3 ~~{8}~~{F} negligent or intentional misrepresentation; OR
 4 ~~{9}~~--loss-of-consortium;-or
 5 ~~{10}~~{G} negligence.

6 {2} THIS SECTION DOES NOT PREEMPT INDEPENDENT CAUSES
 7 OF ACTION OR INDEPENDENT CLAIMS, OTHER THAN FOR WRONGFUL
 8 DISCHARGE, UNDER SUBSECTIONS (1)(A) THROUGH (1)(G) SIMPLY
 9 BECAUSE THEY ARISE IN THE EMPLOYMENT SETTING.

10 Section 9. Arbitration. (1) Under a written agreement
 11 of the parties, a dispute that otherwise could be
 12 adjudicated under [sections 1 through 9] may be resolved by
 13 final and binding arbitration as provided in this section.

14 (2) An offer to arbitrate must be in writing and
 15 contain the following provisions:

16 (a) A neutral arbitrator must be selected by mutual
 17 agreement or, in the absence of agreement, as provided in
 18 27-5-211.

19 (b) In the absence of a written agreement to allocate
 20 the arbitrator's fees and the arbitration costs, the
 21 employer and the employee shall each pay one-half of those
 22 fees and costs.

23 (c) The arbitration must be governed by the Uniform
 24 Arbitration Act, Title 27, chapter 5. If there is a conflict
 25 between the Uniform Arbitration Act and [sections 1 through

1 9], [sections 1 through 9] apply.

2 (d) The arbitrator is bound by [sections 1 through 9].

3 (3) If a complaint is filed under [sections 1 through
 4 9], the offer to arbitrate must be made within 60 days after
 5 service of the complaint and must be accepted in writing
 6 within 30 days after the date the offer is made.

7 (4) A party who makes a valid offer to arbitrate that
 8 is not accepted by the other party and who prevails in an
 9 action under [sections 1 through 9] is entitled as an
 10 element of costs to reasonable attorney fees incurred
 11 subsequent to the date of the offer.

12 (5) If a valid offer to arbitrate is made and
 13 accepted, arbitration is the exclusive remedy for the
 14 wrongful discharge dispute and there is no right to bring or
 15 continue a lawsuit under [sections 1 through 8]. The
 16 arbitrator's award is final and binding, subject to review
 17 of the arbitrator's decision under the provisions of the
 18 Uniform Arbitration Act.

19 Section 10. Repealer. Sections 39-2-504 and 39-2-505,
 20 MCA, are repealed.

21 Section 11. Severability. If a part of this act is
 22 invalid, all valid parts that are severable from the invalid
 23 part remain in effect. If a part of this act is invalid in
 24 one or more of its applications, the part remains in effect
 25 in all valid applications that are severable from the

1 invalid applications. .

2 Section 12. Applicability. This act applies to claims
3 accruing after the effective date of this act ~~and to claims~~
4 ~~accruing prior to the effective date of this act--that--have~~
5 ~~not been filed.~~

6 SECTION 13. EFFECTIVE DATE. THIS ACT IS EFFECTIVE
7 JULY 1, 1987.

-End-

1 HOUSE BILL NO. 241

2 INTRODUCED BY SPAETH, THAYER, HOLLIDAY, POULSEN,
3 COBB, BOYLAN, RASMUSSEN, HARP, DONALDSON, THOMAS,
4 MERCER, MAZUREK, MANUEL

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A PROCEDURE
7 AND REMEDIES FOR WRONGFUL DISCHARGE; AUTHORIZING ARBITRATION
8 AS AN ALTERNATIVE; ELIMINATING COMMON-LAW REMEDIES;
9 REPEALING SECTIONS 39-2-504 AND 39-2-505, MCA; AND PROVIDING
10 AN APPLICABILITY CLAUSE AND AN EFFECTIVE DATE."
11

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

13 Section 1. Short title. [Sections 1 through 9] may be
14 cited as the "Wrongful Discharge From Employment Act".

15 Section 2. Purpose. [Sections 1 through 9] set forth
16 certain rights and remedies with respect to wrongful
17 discharge. Except as limited in [sections 1 through 9],
18 employment having no specified term may be terminated at the
19 will of either the employer or the employee on notice to the
20 other for any reason considered sufficient by the
21 terminating party. Except as provided in [section 7],
22 [sections 1 through 9] provide the exclusive remedy for a
23 wrongful discharge from employment. [Sections 1 through 9]
24 do not apply to any employment-related personnel action
25 other than wrongful discharge.

1 Section 3. Definitions. In [sections 1 through 9], the
2 following definitions apply:

3 (1) "Constructive discharge" means the voluntary
4 termination of employment by an employee because of a
5 situation created by an act or omission of the employer
6 which an objective, reasonable person would find so
7 intolerable that voluntary termination is the only
8 reasonable alternative. Constructive discharge does not mean
9 voluntary termination because of an employer's refusal to
10 promote the employee or improve wages, responsibilities, or
11 other terms and conditions of employment.

12 (2) "Discharge" INCLUDES A CONSTRUCTIVE DISCHARGE AS
13 DEFINED IN SUBSECTION (1) AND means the termination of
14 employment through an action other than retirement,
15 elimination of the job, layoff for lack of work, any other
16 cutback in the number of employees for a legitimate business
17 reason, or resignation ~~not--constituting--a--constructive~~
18 ~~discharge--Discharge--includes--constructive--discharge.~~

19 (3) "Employee" means a person who works for another
20 for hire. The term does not include a person who is an
21 independent contractor.

22 (4) "Employment-related personnel action" means an
23 employer's action or failure to act involving discharge or
24 other termination of employment, suspension, removal,
25 failure to recall or rehire, demotion, discipline,

1 promotion, transfer, assignment, pay, or change in pay or
2 benefits.

3 (5) "FRINGE BENEFITS" MEANS THE VALUE OF ANY
4 EMPLOYER-PAID VACATION LEAVE, SICK LEAVE, MEDICAL INSURANCE
5 PLAN, DISABILITY INSURANCE PLAN, LIFE INSURANCE PLAN, AND
6 PENSION BENEFIT PLAN IN FORCE ON THE DATE OF THE
7 TERMINATION.

8 (5)(6) "Good cause" means a-legitimate-business-reason
9 REASONABLE, JOB-RELATED GROUNDS FOR DISMISSAL BASED ON A
10 FAILURE TO SATISFACTORILY PERFORM JOB DUTIES OR DISRUPTION
11 OF THE EMPLOYER'S OPERATION.

12 (6)(7) "Lost wages" means the gross amount of wages
13 that would have been reported to the internal revenue
14 service as gross income on Form W-2 and includes additional
15 compensation deferred at the option of the employee.

16 (7)(8) "Public policy" means a policy in effect at the
17 time of the discharge concerning the public health, safety,
18 or welfare established by constitutional provision, statute,
19 or administrative rule.

20 Section 4. Elements of wrongful discharge. A discharge
21 is wrongful ONLY if:

22 (1) it was in retaliation for the employee's refusal
23 to violate public policy or for reporting a violation of
24 public policy; or

25 (2) the employee was employed by the employer for at

1 least 1,000 hours a year for 5 3 consecutive years
2 immediately preceding the discharge and the discharge was
3 not for good cause; OR

4 (3) THE EMPLOYER VIOLATED THE EXPRESS PROVISIONS OF
5 ITS OWN WRITTEN PERSONNEL POLICY.

6 Section 5. Remedies. (1) If an employer has committed
7 a wrongful discharge, the employee may be awarded lost wages
8 AND FRINGE BENEFITS for a period not to exceed 2 3 years
9 from the date of discharge, TOGETHER WITH INTEREST THEREON.
10 Interim earnings, including unemployment--compensation
11 benefits-and amounts earnable-with-reasonable--diligence--by
12 the--employee THE EMPLOYEE COULD HAVE EARNED WITH REASONABLE
13 DILIGENCE, must be deducted from the amount awarded for lost
14 wages.

15 (2) There is no right under any legal theory to
16 damages for wrongful discharge under [sections 1 through 9]
17 for pain and suffering, emotional distress, compensatory
18 damages, punitive damages, or any other form of damages not,
19 EXCEPT AS provided for in subsection (1).

20 Section 6. Limitation of actions. (1) An action under
21 [sections 1 through 9] must be filed within 1 year after the
22 date of discharge.

23 (2) If an employer maintains WRITTEN internal
24 procedures, other than those specified in [section 7], under
25 which an employee may appeal a discharge within the

1 organization structure of the employer, ~~no-suit-for-wrongful~~
 2 ~~discharge-may-be-brought,-and-the-time-for-bringing-the-suit~~
 3 ~~under-subsection-(1)--does-not-begin-to-run,-until-the~~
 4 ~~employee-has-exhausted-those-procedures.~~ THE EMPLOYEE SHALL
 5 FIRST EXHAUST THOSE PROCEDURES PRIOR TO FILING AN ACTION
 6 UNDER [SECTIONS 1 THROUGH 9]. THE EMPLOYEE'S FAILURE TO
 7 INITIATE OR EXHAUST AVAILABLE INTERNAL PROCEDURES IS A
 8 DEFENSE TO AN ACTION BROUGHT UNDER [SECTIONS 1 THROUGH 9].
 9 IF THE EMPLOYER'S INTERNAL PROCEDURES ARE NOT COMPLETED
 10 WITHIN 90 DAYS FROM THE DATE THE EMPLOYEE INITIATES THE
 11 INTERNAL PROCEDURES, THE EMPLOYEE MAY FILE AN ACTION UNDER
 12 [SECTIONS 1 THROUGH 9] AND FOR PURPOSES OF THIS SUBSECTION
 13 THE EMPLOYER'S INTERNAL PROCEDURES ARE CONSIDERED EXHAUSTED.
 14 THE LIMITATION PERIOD IN SUBSECTION (1) IS TOLLED UNTIL THE
 15 PROCEDURES ARE EXHAUSTED. IN NO CASE MAY THE PROVISIONS OF
 16 THE EMPLOYER'S INTERNAL PROCEDURES EXTEND THE LIMITATION
 17 PERIOD IN SUBSECTION (1) MORE THAN 120 DAYS.

18 Section 7. Exemptions. [Sections 1 through 9] do not
 19 apply to a discharge:

20 (1) that is subject to any other state or federal
 21 statute that provides a procedure or remedy for contesting
 22 the dispute. Such statutes include those that prohibit
 23 discharge for filing complaints, charges, or claims with
 24 administrative bodies or that prohibit unlawful
 25 discrimination based on race, national origin, sex, age,

1 handicap, CREED, RELIGION, POLITICAL BELIEF, COLOR, MARITAL
 2 STATUS, and other similar grounds.

3 (2) of an employee covered by a written collective
 4 bargaining agreement or a written contract of employment for
 5 a specific term; or

6 (3) of an employee who is covered by an employment
 7 policy that provides for final and binding arbitration
 8 before a neutral third party.

9 Section 8. Preemption of common-law remedies.
 10 ~~{Sections-1-through-9}-preempt-all-other-rights-relating-to~~
 11 ~~and-claims-seeking-redress-for-wrongful-discharge.--This~~
 12 ~~preemption--includes-but-is-not-limited-to-rights-and-claims~~
 13 ~~at-common-law-or-in-equity-that-arise-from-tort-or-express~~
 14 ~~or-implied-contract,-including-claims-that-are (1) EXCEPT AS~~
 15 ~~PROVIDED IN [SECTIONS 1 THROUGH 9], NO CLAIM FOR WRONGFUL~~
 16 ~~DISCHARGE MAY ARISE FROM TORT OR EXPRESS OR IMPLIED~~
 17 ~~CONTRACT, NOR MAY IT BE based on:~~

18 ~~(1)(A)~~ public policy;
 19 ~~(2)(B)~~ an implied covenant of good faith and fair
 20 dealing;

21 ~~(3)(C)~~ intentional or negligent interference with
 22 contractual rights, prospective or otherwise;

23 ~~(4)(D)~~ intentional or negligent infliction of
 24 emotional distress;

25 ~~(5)--fraud;~~

1 ~~{6}~~--defamation;
 2 ~~{7}~~{E} breach of fiduciary duty;
 3 ~~{8}~~{F} negligent or intentional misrepresentation; OR
 4 ~~{9}~~--loss-of-consortium;-or
 5 ~~{10}~~{G} negligence.

6 {2} THIS SECTION DOES NOT PREEMPT INDEPENDENT CAUSES
 7 OF ACTION OR INDEPENDENT CLAIMS, OTHER THAN FOR WRONGFUL
 8 DISCHARGE, UNDER SUBSECTIONS (1)(A) THROUGH (1)(G) SIMPLY
 9 BECAUSE THEY ARISE IN THE EMPLOYMENT SETTING.

10 Section 9. Arbitration. (1) Under a written agreement
 11 of the parties, a dispute that otherwise could be
 12 adjudicated under [sections 1 through 9] may be resolved by
 13 final and binding arbitration as provided in this section.

14 (2) An offer to arbitrate must be in writing and
 15 contain the following provisions:

16 (a) A neutral arbitrator must be selected by mutual
 17 agreement or, in the absence of agreement, as provided in
 18 27-5-211.

19 (b) In the absence of a written agreement to allocate
 20 the arbitrator's fees and the arbitration costs, the
 21 employer and the employee shall each pay one-half of those
 22 fees and costs.

23 (c) The arbitration must be governed by the Uniform
 24 Arbitration Act, Title 27, chapter 5. If there is a conflict
 25 between the Uniform Arbitration Act and [sections 1 through

1 9], [sections 1 through 9] apply.

2 (d) The arbitrator is bound by [sections 1 through 9].

3 (3) If a complaint is filed under [sections 1 through
 4 9], the offer to arbitrate must be made within 60 days after
 5 service of the complaint and must be accepted in writing
 6 within 30 days after the date the offer is made.

7 (4) A party who makes a valid offer to arbitrate that
 8 is not accepted by the other party and who prevails in an
 9 action under [sections 1 through 9] is entitled as an
 10 element of costs to reasonable attorney fees incurred
 11 subsequent to the date of the offer.

12 (5) If a valid offer to arbitrate is made and
 13 accepted, arbitration is the exclusive remedy for the
 14 wrongful discharge dispute and there is no right to bring or
 15 continue a lawsuit under [sections 1 through 8]. The
 16 arbitrator's award is final and binding, subject to review
 17 of the arbitrator's decision under the provisions of the
 18 Uniform Arbitration Act.

19 Section 10. Repealer. Sections 39-2-504 and 39-2-505,
 20 MCA, are repealed.

21 Section 11. Severability. If a part of this act is
 22 invalid, all valid parts that are severable from the invalid
 23 part remain in effect. If a part of this act is invalid in
 24 one or more of its applications, the part remains in effect
 25 in all valid applications that are severable from the

1 invalid applications.

2 Section 12. Applicability. This act applies to claims
3 accruing after the effective date of this act ~~and-to-claims~~
4 ~~accruing-prior-to-the-effective-date-of-this-act--that--have~~
5 ~~not-been-filed.~~

6 SECTION 13. EFFECTIVE DATE. THIS ACT IS EFFECTIVE
7 JULY 1, 1987.

-End-

1 HOUSE BILL NO. 241

2 INTRODUCED BY SPAETH, THAYER, HOLLIDAY, POULSEN,
3 COBB, BOYLAN, RASMUSSEN, HARP, DONALDSON, THOMAS,
4 MERCER, MAZUREK, MANUEL

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A PROCEDURE
7 AND REMEDIES FOR WRONGFUL DISCHARGE; AUTHORIZING ARBITRATION
8 AS AN ALTERNATIVE; ELIMINATING COMMON-LAW REMEDIES;
9 REPEALING SECTIONS 39-2-504 AND 39-2-505, MCA; AND PROVIDING
10 AN APPLICABILITY CLAUSE AND AN EFFECTIVE DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Short title. [Sections 1 through 9] may be
14 cited as the "Wrongful Discharge From Employment Act".

15 Section 2. Purpose. [Sections 1 through 9] set forth
16 certain rights and remedies with respect to wrongful
17 discharge. Except as limited in [sections 1 through 9],
18 employment having no specified term may be terminated at the
19 will of either the employer or the employee on notice to the
20 other for any reason considered sufficient by the
21 terminating party. Except as provided in [section 7],
22 [sections 1 through 9] provide the exclusive remedy for a
23 wrongful discharge from employment. {Sections-1-through-9}
24 do-not-apply-to-any-employment-related-personnel-action
25 other-than-wrongful-discharge-

1 Section 3. Definitions. In [sections 1 through 9], the
2 following definitions apply:

3 (1) "Constructive discharge" means the voluntary
4 termination of employment by an employee because of a
5 situation created by an act or omission of the employer
6 which an objective, reasonable person would find so
7 intolerable that voluntary termination is the only
8 reasonable alternative. Constructive discharge does not mean
9 voluntary termination because of an employer's refusal to
10 promote the employee or improve wages, responsibilities, or
11 other terms and conditions of employment.

12 (2) "Discharge" INCLUDES A CONSTRUCTIVE DISCHARGE AS
13 DEFINED IN SUBSECTION (1) AND means--the ANY OTHER
14 termination of employment through--an--action--other--than
15 retirement, INCLUDING RESIGNATION, elimination of the job,
16 layoff for lack of work, FAILURE TO RECALL OR REHIRE, AND
17 any other cutback in the number of employees for a
18 legitimate business reason--or--resignation not--constituting
19 a--constructive--discharge--Discharge--includes--constructive
20 discharge.

21 (3) "Employee" means a person who works for another
22 for hire. The term does not include a person who is an
23 independent contractor.

24 (4) --"Employment-related--personnel--action"--means--an
25 employer's--action--or--failure-to-act-involving-discharge-or

1 other--termination--of--employment,--suspension,--removal,
2 failure--to--recall--or--rehire,--demotion,--discipline,
3 promotion,--transfer,--assignment,--pay,--or--change--in--pay--or
4 benefits.

5 {5}{4} "FRINGE BENEFITS" MEANS THE VALUE OF ANY
6 EMPLOYER-PAID VACATION LEAVE, SICK LEAVE, MEDICAL INSURANCE
7 PLAN, DISABILITY INSURANCE PLAN, LIFE INSURANCE PLAN, AND
8 PENSION BENEFIT PLAN IN FORCE ON THE DATE OF THE
9 TERMINATION.

10 {5}{6}{5} "Good cause" means a--legitimate-business
11 reason REASONABLE, JOB-RELATED GROUNDS FOR DISMISSAL BASED
12 ON A FAILURE TO SATISFACTORILY PERFORM JOB DUTIES, OR
13 DISRUPTION OF THE EMPLOYER'S OPERATION, OR OTHER LEGITIMATE
14 BUSINESS REASON.

15 {6}{7}{6} "Lost wages" means the gross amount of wages
16 that would have been reported to the internal revenue
17 service as gross income on Form W-2 and includes additional
18 compensation deferred at the option of the employee.

19 {7}{8}{7} "Public policy" means a policy in effect at
20 the time of the discharge concerning the public health,
21 safety, or welfare established by constitutional provision,
22 statute, or administrative rule.

23 Section 4. Elements of wrongful discharge. A discharge
24 is wrongful ONLY if:

25 (1) it was in retaliation for the employee's refusal

1 to violate public policy or for reporting a violation of
2 public policy; or

3 (2) the-employee-was-employed-by-the-employer--for--at
4 least--1,000--hours--a--year--for--5 3 consecutive--years
5 immediately-preceding-the-discharge-and--the--discharge--was
6 not--for-good-cause THE DISCHARGE WAS NOT FOR GOOD CAUSE AND
7 THE EMPLOYEE HAD COMPLETED THE EMPLOYER'S PROBATIONARY
8 PERIOD OF EMPLOYMENT; OR

9 (3) THE EMPLOYER VIOLATED THE EXPRESS PROVISIONS OF
10 ITS OWN WRITTEN PERSONNEL POLICY.

11 Section 5. Remedies. (1) If an employer has committed
12 a wrongful discharge, the employee may be awarded lost wages
13 AND FRINGE BENEFITS for a period not to exceed 2 3 years
14 from the date of discharge, TOGETHER WITH INTEREST THEREON.
15 Interim earnings, including unemployment--compensation
16 benefits-and amounts earnable-with-reasonable--diligence--by
17 the--employee THE EMPLOYEE COULD HAVE EARNED WITH REASONABLE
18 DILIGENCE, must be deducted from the amount awarded for lost
19 wages.

20 (2) THE EMPLOYEE MAY RECOVER PUNITIVE DAMAGES
21 OTHERWISE ALLOWED BY LAW IF IT IS ESTABLISHED BY CLEAR AND
22 CONVINCING EVIDENCE THAT THE EMPLOYER ENGAGED IN ACTUAL
23 FRAUD OR ACTUAL MALICE IN THE DISCHARGE OF THE EMPLOYEE IN
24 VIOLATION OF [SECTION 4(1)].

25 {2}{3} There is no right under any legal theory to

1 damages for wrongful discharge under [sections 1 through 9]
 2 for pain and suffering, emotional distress, compensatory
 3 damages, punitive damages, or any other form of damages net,
 4 EXCEPT AS provided for in subsection SUBSECTIONS (1) AND
 5 (2).

6 (4) THE LIMITS ON DAMAGES IN SUBSECTION (1) DO NOT
 7 APPLY TO A DISCHARGED EMPLOYEE WHO, AT THE TIME OF THE
 8 DISCHARGE, HAS WORKED FOR THE EMPLOYER FOR 10 YEARS OR MORE
 9 AND WHO IS 40 YEARS OF AGE OR OLDER.

10 Section 6. Limitation of actions. (1) An action under
 11 [sections 1 through 9] must be filed within 1 year after the
 12 date of discharge.

13 (2) If an employer maintains WRITTEN internal
 14 procedures, other than those specified in [section 7], under
 15 which an employee may appeal a discharge within the
 16 organization structure of the employer, ~~no-suit-for-wrongful~~
 17 ~~discharge-may-be-brought,-and-the-time-for-bringing-the-suit~~
 18 ~~under-subsection-(1)-does-not-begin-to-run-until-the~~
 19 ~~employee-has-exhausted-those-procedures;~~ THE EMPLOYEE SHALL
 20 FIRST EXHAUST THOSE PROCEDURES PRIOR TO FILING AN ACTION
 21 UNDER [SECTIONS 1 THROUGH 9]. THE EMPLOYEE'S FAILURE TO
 22 INITIATE OR EXHAUST AVAILABLE INTERNAL PROCEDURES IS A
 23 DEFENSE TO AN ACTION BROUGHT UNDER [SECTIONS 1 THROUGH 9].
 24 IF THE EMPLOYER'S INTERNAL PROCEDURES ARE NOT COMPLETED
 25 WITHIN 90 DAYS FROM THE DATE THE EMPLOYEE INITIATES THE

1 INTERNAL PROCEDURES, THE EMPLOYEE MAY FILE AN ACTION UNDER
 2 [SECTIONS 1 THROUGH 9] AND FOR PURPOSES OF THIS SUBSECTION
 3 THE EMPLOYER'S INTERNAL PROCEDURES ARE CONSIDERED EXHAUSTED.
 4 THE LIMITATION PERIOD IN SUBSECTION (1) IS TOLLED UNTIL THE
 5 PROCEDURES ARE EXHAUSTED. IN NO CASE MAY THE PROVISIONS OF
 6 THE EMPLOYER'S INTERNAL PROCEDURES EXTEND THE LIMITATION
 7 PERIOD IN SUBSECTION (1) MORE THAN 120 DAYS.

8 (3) IF THE EMPLOYER MAINTAINS WRITTEN INTERNAL
 9 PROCEDURES UNDER WHICH AN EMPLOYEE MAY APPEAL A DISCHARGE
 10 WITHIN THE ORGANIZATIONAL STRUCTURE OF THE EMPLOYER, THE
 11 EMPLOYER SHALL WITHIN 7 DAYS OF THE DATE OF THE DISCHARGE
 12 NOTIFY THE DISCHARGED EMPLOYEE OF THE EXISTENCE OF SUCH
 13 PROCEDURES AND SHALL SUPPLY THE DISCHARGED EMPLOYEE WITH A
 14 COPY OF THEM. IF THE EMPLOYER FAILS TO COMPLY WITH THIS
 15 SUBSECTION, THE DISCHARGED EMPLOYEE NEED NOT COMPLY WITH
 16 SUBSECTION (2).

17 Section 7. Exemptions. [Sections 1 through 9] do not
 18 apply to a discharge:

19 (1) that is subject to any other state or federal
 20 statute that provides a procedure or remedy for contesting
 21 the dispute. Such statutes include those that prohibit
 22 discharge for filing complaints, charges, or claims with
 23 administrative bodies or that prohibit unlawful
 24 discrimination based on race, national origin, sex, age,
 25 handicap, CREED, RELIGION, POLITICAL BELIEF, ~~SEX~~, COLOR,

1 MARITAL STATUS, and other similar grounds.
 2 (2) of an employee covered by a written collective
 3 bargaining agreement or a written contract of employment for
 4 a specific term; or
 5 ~~{3}--of-an-employee-who-is--covered--by--an--employment~~
 6 ~~policy--that--provides--for--final--and--binding-arbitration~~
 7 ~~before-a-neutral-third-party.~~
 8 Section 8. Preemption of common-law remedies.
 9 ~~{Sections--1-through-9} preempt all other rights relating to~~
 10 ~~and claims seeking redress for wrongful discharge. This~~
 11 ~~preemption includes but is not limited to rights and claims~~
 12 ~~at common law or in equity that arise from tort or express~~
 13 ~~or implied contract, including claims that are {1} EXCEPT AS~~
 14 ~~PROVIDED IN [SECTIONS 1 THROUGH 9], NO CLAIM FOR WRONGFUL~~
 15 ~~DISCHARGE MAY ARISE FROM TORT OR EXPRESS OR IMPLIED~~
 16 ~~CONTRACT. NOR MAY IT BE based on:~~
 17 ~~{1}{A}--public policy;~~
 18 ~~{2}{B}--an--implied--covenant--of--good--faith--and--fair~~
 19 ~~dealing;~~
 20 ~~{3}{C}--intentional--or--negligent--interference--with~~
 21 ~~contractual rights, prospective or otherwise;~~
 22 ~~{4}{D}--intentional--or--negligent--infliction--of~~
 23 ~~emotional distress;~~
 24 ~~{5}--fraud;~~
 25 ~~{6}--defamation;~~

1 ~~{7}{E}--breach-of-fiduciary-duty;~~
 2 ~~{8}{F}--negligent-or-intentional-misrepresentation; OR~~
 3 ~~{9}--loss-of-consortium; or~~
 4 ~~{10}{G}--negligence;~~
 5 ~~{2}--THIS--SECTION--DOES--NOT--PREEMPT--INDEPENDENT--CAUSES~~
 6 ~~OF--ACTION--OR--INDEPENDENT--CLAIMS,--OTHER--THAN--FOR--WRONGFUL~~
 7 ~~DISCHARGE,--UNDER--SUBSECTIONS--{1}{A}--THROUGH--{1}{G}--SIMPLY~~
 8 ~~BECAUSE--THEY--ARISE--IN--THE--EMPLOYMENT--SETTING;~~
 9 Section 9. Arbitration. (1) Under a written agreement
 10 of the parties, a dispute that otherwise could be
 11 adjudicated under [sections 1 through 9] may be resolved by
 12 final and binding arbitration as provided in this section.
 13 (2) An offer to arbitrate must be in writing and
 14 contain the following provisions:
 15 (a) A neutral arbitrator must be selected by mutual
 16 agreement or, in the absence of agreement, as provided in
 17 27-5-211.
 18 (b) ~~in the absence of a written agreement to allocate~~
 19 ~~the arbitrator's fees and the arbitration costs, the~~
 20 ~~employer and the employee shall each pay one-half of those~~
 21 ~~fees and costs;~~
 22 (c) {B} The arbitration must be governed by the Uniform
 23 Arbitration Act, Title 27, chapter 5. If there is a conflict
 24 between the Uniform Arbitration Act and [sections 1 through
 25 9], [sections 1 through 9] apply.

1 {d}[C] The arbitrator is bound by [sections 1 through
2 9].

3 (3) If a complaint is filed under [sections 1 through
4 9], the offer to arbitrate must be made within 60 days after
5 service of the complaint and must be accepted in writing
6 within 30 days after the date the offer is made.

7 (4) A party who makes a valid offer to arbitrate that
8 is not accepted by the other party and who prevails in an
9 action under [sections 1 through 9] is entitled as an
10 element of costs to reasonable attorney fees incurred
11 subsequent to the date of the offer.

12 (5) A DISCHARGED EMPLOYEE WHO MAKES A VALID OFFER TO
13 ARBITRATE THAT IS ACCEPTED BY THE EMPLOYER AND WHO PREVAILS
14 IN SUCH ARBITRATION IS ENTITLED TO HAVE THE ARBITRATOR'S FEE
15 AND ALL COSTS OF ARBITRATION PAID BY THE EMPLOYER.

16 {5}{6} If a valid offer to arbitrate is made and
17 accepted, arbitration is the exclusive remedy for the
18 wrongful discharge dispute and there is no right to bring or
19 continue a lawsuit under [sections 1 through 8]. The
20 arbitrator's award is final and binding, subject to review
21 of the arbitrator's decision under the provisions of the
22 Uniform Arbitration Act.

23 Section 10. Repealer. Sections 39-2-504 and 39-2-505,
24 MCA, are repealed.

25 Section 11. Severability. If a part of this act is

1 invalid, all valid parts that are severable from the invalid
2 part remain in effect. If a part of this act is invalid in
3 one or more of its applications, the part remains in effect
4 in all valid applications that are severable from the
5 invalid applications.

6 Section 12. Applicability. This act applies to claims
7 accruing ARISING after the effective date of this act ~~and to~~
8 ~~claims-accruing-prior-to-the-effective-date-of-this-act-that~~
9 ~~have-not-been-filed.~~

10 SECTION 13. EFFECTIVE DATE. THIS ACT IS EFFECTIVE
11 JULY 1, 1987.

-End-

STANDING COMMITTEE REPORT

SENATE

SCRHB241

scrhb241.scr

Page 2 of 2
SCRHB241

March 26, 19 87

SENATE JUDICIARY
HB ~~241~~
Page 2

March 26, 87
19

MR. PRESIDENT

Judiciary

We, your committee on _____
House Bill _____ 241
having had under consideration _____ No. _____
third _____ blue _____
_____ reading copy (_____)
_____ color _____

REGULATE WRONGFUL DISCHARGE DISPUTES
Spaeth (Pinsoneault)

Respectfully report as follows That _____ House Bill _____ No. 241
BE AMENDED AS FOLLOWS:

- 1. Page 1, lines 23 through 25.
Following: "employment." on line 23
Strike: remainder of line 23 through line 25
- 2. Page 2, line 13.
Following: "AND"
Strike: "means the"
Insert: "any other"
- 3. Page 2, line 14.
Following: "employment"
Strike: remainder of line 14 through "retirement"
Insert: ", including resignation"
- 4. Page 2, line 15.
Following: "work,"
Insert: "failure to recall or rehire, and"
- 5. Page 2, line 17.
Following: "reason"
Strike: ", or resignation"
- 6. Page 2, line 22 through page 3, line 2.
Strike: subsection (4) in its entirety
Renumber: subsequent subsections

- 7. Page 3, line 10.
Following: "DUTIES"
Strike: "OR"
Insert: ", "
- 8. Page 3, line 11.
Following: "OPERATION"
Insert: ", or other legitimate business reason"
- 9. Page 3, line 25 through page 4, line 3.
Following: "(2)" on line 25
Strike: remainder of line 25 through "cause" on line 3, page 4
Insert: "the discharge was not for good cause and the employee had completed the employer's probationary period of employment"
- 10. Page 4, line 15.
Following: line 14
Insert: "(2) The employee may recover punitive damages otherwise allowed by law if it is established by clear and convincing evidence that the employer engaged in actual fraud or actual malice in the discharge of the employee in violation of [section 4 (1)].
Renumber: subsequent subsection
- 11. Page 4, line 19.
Strike: "subsection"
Insert: "subsections"
Following: "(1)"
Insert: "and (2)"
- 12. Page 6, line 1.
Following: "color,"
Insert: "color,"
- 13. Page 6, lines 5 through 8.
Following: "term" on line 5
Strike: remainder of line 5 through "party" on line 8
- 14. Page 6, line 15.
Following: "FOR"
Strike: "WRONGFUL"
- 15. Page 6, line 17 through page 7, line 9.
Following: "CONTRACT" on line 17
Insert: "."
Strike: remainder of line 17 through line 9, page 7
- 16. Page 9, line 3.
Strike: "accruing"
Insert: "arising"

XXXXXX

XXXXXXXXX CONTINUED

CONTINUED

Continued

XXXXXXXXXXXXXXXXXXXX

AND AS AMENDED
BE CONCURRED IN

SENATOR MAZUREK

3-27-87

DATE

7:04

TIME

241

MR. CHAIRMAN: I MOVE TO AMEND House Bill

No. _____

third

blue

reading copy (_____) as follows:

Color

1. Page 4, line 20.

Following: line 19

Insert: "(4) The limits on damages in subsection (1) do not apply to a discharged employee who, at the time of the discharge, has worked for the employer for 10 years or more and who is 40 years of age or older."

2. Page 5, line 18.

Following: line 17

Insert: "(3) If the employer maintains written internal procedures under which an employee may appeal a discharge within the organizational structure of the employer, the employer shall within 7 days of the date of the discharge notify the discharged employee of the existence of such procedures and shall supply the discharged employee with a copy of them. If the employer fails to comply with this subsection, the discharged employee need not comply with subsection (2)."

3. Page 7, lines 19 through 22.

Strike: subsection (b) in its entirety

Renumber: subsequent subsections

4. Page 8, line 12.

Following: line 11

Insert: "(5) A discharged employee who makes a valid offer to arbitrate that is accepted by the employer and who prevails in such arbitration is entitled to have the arbitrator's fee and all costs of arbitration paid by the employer."

Renumber: subsequent subsection

KAC

ADOPT

REJECT

Senator Pinsoneault

CONFERENCE COMMITTEE REPORT

Report No.One.....

.....4-20.... 19...87...

MR. PRESIDENT

We, your _____ FREE _____ Conference Committee on
House Bill 241

met and considered _____ House Bill 241 in its entirety.


We recommend as follows: That House Bill 241, reference copy (salmon), be amended as follows:


1) Page 4, line 13.
Strike: "3"
Insert: "4"

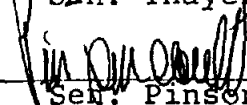
2) Page 5, line 6.
Strike: "(4)" through "OLDER." on line 9

And that this Conference Committee report be adopted.

FOR THE SENATE

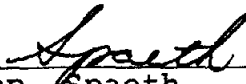



Sen. Halligan, Chairman



Sen. Thayer


Sen. Pinsoneault

FOR THE HOUSE



Rep. Spaeth


Rep. Lory


Rep. Cobb

HOUSE BILL NO. 241

INTRODUCED BY SPAETH, THAYER, HOLLIDAY, POULSEN,
COBB, BOYLAN, RASMUSSEN, HARP, DONALDSON, THOMAS,
MERCER, MAZUREK, MANUEL

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A PROCEDURE
AND REMEDIES FOR WRONGFUL DISCHARGE; AUTHORIZING ARBITRATION
AS AN ALTERNATIVE; ELIMINATING COMMON-LAW REMEDIES;
REPEALING SECTIONS 39-2-504 AND 39-2-505, MCA; AND PROVIDING
AN APPLICABILITY CLAUSE AND AN EFFECTIVE DATE."

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

Section 1. Short title. [Sections 1 through 9] may be
cited as the "Wrongful Discharge From Employment Act".

Section 2. Purpose. [Sections 1 through 9] set forth
certain rights and remedies with respect to wrongful
discharge. Except as limited in [sections 1 through 9],
employment having no specified term may be terminated at the
will of either the employer or the employee on notice to the
other for any reason considered sufficient by the
terminating party. Except as provided in [section 7],
[sections 1 through 9] provide the exclusive remedy for a
wrongful discharge from employment. ~~{Sections 1 through 9}~~
~~do not apply to any employment-related personnel action~~
~~other than wrongful discharge.~~

Section 3. Definitions. In [sections 1 through 9], the
following definitions apply:

(1) "Constructive discharge" means the voluntary
termination of employment by an employee because of a
situation created by an act or omission of the employer
which an objective, reasonable person would find so
intolerable that voluntary termination is the only
reasonable alternative. Constructive discharge does not mean
voluntary termination because of an employer's refusal to
promote the employee or improve wages, responsibilities, or
other terms and conditions of employment.

(2) "Discharge" INCLUDES A CONSTRUCTIVE DISCHARGE AS
DEFINED IN SUBSECTION (1) AND means--the ANY OTHER
termination of employment ~~through--an--action--other--than~~
retirement, INCLUDING RESIGNATION, elimination of the job,
layoff for lack of work, FAILURE TO RECALL OR REHIRE, AND
any other cutback in the number of employees for a
legitimate business reason ~~or resignation not--constituting~~
~~a--constructive--discharge--Discharge--includes--constructive~~
~~discharge.~~

(3) "Employee" means a person who works for another
for hire. The term does not include a person who is an
independent contractor.

~~(4) "Employment-related--personnel--action"--means--an~~
~~employer's--action--or--failure--to--act--involving--discharge--or~~



1 other--termination--of--employment,--suspension,--removal,
2 failure--to--recall--or--rehire,--demotion,--discipline,
3 promotion,--transfer,--assignment,--pay,--or--change--in--pay--or
4 benefits.

5 {5}{4} "FRINGE BENEFITS" MEANS THE VALUE OF ANY
6 EMPLOYER-PAID VACATION LEAVE, SICK LEAVE, MEDICAL INSURANCE
7 PLAN, DISABILITY INSURANCE PLAN, LIFE INSURANCE PLAN, AND
8 PENSION BENEFIT PLAN IN FORCE ON THE DATE OF THE
9 TERMINATION.

10 {5}{6}{5} "Good cause" means a--legitimate-business
11 reason REASONABLE, JOB-RELATED GROUNDS FOR DISMISSAL BASED
12 ON A FAILURE TO SATISFACTORILY PERFORM JOB DUTIES, OR
13 DISRUPTION OF THE EMPLOYER'S OPERATION, OR OTHER LEGITIMATE
14 BUSINESS REASON.

15 {6}{7}{6} "Lost wages" means the gross amount of wages
16 that would have been reported to the internal revenue
17 service as gross income on Form W-2 and includes additional
18 compensation deferred at the option of the employee.

19 {7}{8}{7} "Public policy" means a policy in effect at
20 the time of the discharge concerning the public health,
21 safety, or welfare established by constitutional provision,
22 statute, or administrative rule.

23 Section 4. Elements of wrongful discharge. A discharge
24 is wrongful ONLY if:

25 (1) it was in retaliation for the employee's refusal

1 to violate public policy or for reporting a violation of
2 public policy; or

3 (2) ~~the employee was employed by the employer for at~~
4 ~~least 1,000 hours a year for 5 3 consecutive years~~
5 ~~immediately preceding the discharge and the discharge was~~
6 ~~not for good cause~~ THE DISCHARGE WAS NOT FOR GOOD CAUSE AND
7 THE EMPLOYEE HAD COMPLETED THE EMPLOYER'S PROBATIONARY
8 PERIOD OF EMPLOYMENT; OR

9 (3) THE EMPLOYER VIOLATED THE EXPRESS PROVISIONS OF
10 ITS OWN WRITTEN PERSONNEL POLICY.

11 Section 5. Remedies. (1) If an employer has committed
12 a wrongful discharge, the employee may be awarded lost wages
13 AND FRINGE BENEFITS for a period not to exceed 2 3 4 years
14 from the date of discharge, TOGETHER WITH INTEREST THEREON.
15 Interim earnings, including ~~unemployment--compensation~~
16 ~~benefits and amounts earnable with reasonable diligence by~~
17 ~~the employee~~ THE EMPLOYEE COULD HAVE EARNED WITH REASONABLE
18 DILIGENCE, must be deducted from the amount awarded for lost
19 wages.

20 (2) THE EMPLOYEE MAY RECOVER PUNITIVE DAMAGES
21 OTHERWISE ALLOWED BY LAW IF IT IS ESTABLISHED BY CLEAR AND
22 CONVINCING EVIDENCE THAT THE EMPLOYER ENGAGED IN ACTUAL
23 FRAUD OR ACTUAL MALICE IN THE DISCHARGE OF THE EMPLOYEE IN
24 VIOLATION OF [SECTION 4(1)].

25 {2}{3} There is no right under any legal theory to

1 damages for wrongful discharge under [sections 1 through 9]
 2 for pain and suffering, emotional distress, compensatory
 3 damages, punitive damages, or any other form of damages not,
 4 EXCEPT AS provided for in subsection SUBSECTIONS (1) AND
 5 (2).

6 ~~(4) THE LIMITS ON DAMAGES IN SUBSECTION (1) DO NOT~~
 7 ~~APPLY TO A DISCHARGED EMPLOYEE WHO, AT THE TIME OF THE~~
 8 ~~DISCHARGE, HAS WORKED FOR THE EMPLOYER FOR 10 YEARS OR MORE~~
 9 ~~AND WHO IS 40 YEARS OF AGE OR OLDER.~~

10 Section 6. Limitation of actions. (1) An action under
 11 [sections 1 through 9] must be filed within 1 year after the
 12 date of discharge.

13 (2) If an employer maintains WRITTEN internal
 14 procedures, other than those specified in [section 7], under
 15 which an employee may appeal a discharge within the
 16 organization structure of the employer, ~~no suit for wrongful~~
 17 ~~discharge may be brought, and the time for bringing the suit~~
 18 ~~under subsection (1) does not begin to run, until the~~
 19 ~~employee has exhausted those procedures.~~ THE EMPLOYEE SHALL
 20 FIRST EXHAUST THOSE PROCEDURES PRIOR TO FILING AN ACTION
 21 UNDER [SECTIONS 1 THROUGH 9]. THE EMPLOYEE'S FAILURE TO
 22 INITIATE OR EXHAUST AVAILABLE INTERNAL PROCEDURES IS A
 23 DEFENSE TO AN ACTION BROUGHT UNDER [SECTIONS 1 THROUGH 9].
 24 IF THE EMPLOYER'S INTERNAL PROCEDURES ARE NOT COMPLETED
 25 WITHIN 90 DAYS FROM THE DATE THE EMPLOYEE INITIATES THE

1 INTERNAL PROCEDURES, THE EMPLOYEE MAY FILE AN ACTION UNDER
 2 [SECTIONS 1 THROUGH 9] AND FOR PURPOSES OF THIS SUBSECTION
 3 THE EMPLOYER'S INTERNAL PROCEDURES ARE CONSIDERED EXHAUSTED.
 4 THE LIMITATION PERIOD IN SUBSECTION (1) IS TOLLED UNTIL THE
 5 PROCEDURES ARE EXHAUSTED. IN NO CASE MAY THE PROVISIONS OF
 6 THE EMPLOYER'S INTERNAL PROCEDURES EXTEND THE LIMITATION
 7 PERIOD IN SUBSECTION (1) MORE THAN 120 DAYS.

8 (3) IF THE EMPLOYER MAINTAINS WRITTEN INTERNAL
 9 PROCEDURES UNDER WHICH AN EMPLOYEE MAY APPEAL A DISCHARGE
 10 WITHIN THE ORGANIZATIONAL STRUCTURE OF THE EMPLOYER, THE
 11 EMPLOYER SHALL WITHIN 7 DAYS OF THE DATE OF THE DISCHARGE
 12 NOTIFY THE DISCHARGED EMPLOYEE OF THE EXISTENCE OF SUCH
 13 PROCEDURES AND SHALL SUPPLY THE DISCHARGED EMPLOYEE WITH A
 14 COPY OF THEM. IF THE EMPLOYER FAILS TO COMPLY WITH THIS
 15 SUBSECTION, THE DISCHARGED EMPLOYEE NEED NOT COMPLY WITH
 16 SUBSECTION (2).

17 Section 7. Exemptions. [Sections 1 through 9] do not
 18 apply to a discharge:

19 (1) that is subject to any other state or federal
 20 statute that provides a procedure or remedy for contesting
 21 the dispute. Such statutes include those that prohibit
 22 discharge for filing complaints, charges, or claims with
 23 administrative bodies or that prohibit unlawful
 24 discrimination based on race, national origin, sex, age,
 25 handicap, CREED, RELIGION, POLITICAL BELIEF, ~~SEX,~~ COLOR,

1 MARITAL STATUS, and other similar grounds.

2 (2) of an employee covered by a written collective

3 bargaining agreement or a written contract of employment for

4 a specific term; or

5 ~~(3) of an employee who is covered by an employment~~

6 ~~policy that provides for final and binding arbitration~~

7 ~~before a neutral third party.~~

8 Section 8. Preemption of common-law remedies.

9 ~~{Sections 1 through 9} preempt all other rights relating to~~

10 ~~and claims seeking redress for wrongful discharge. This~~

11 ~~preemption includes but is not limited to rights and claims~~

12 ~~at common law or in equity that arise from tort or express~~

13 ~~or implied contract, including claims that are (1) EXCEPT AS~~

14 ~~PROVIDED IN [SECTIONS 1 THROUGH 9], NO CLAIM FOR WRONGFUL~~

15 ~~DISCHARGE MAY ARISE FROM TORT OR EXPRESS OR IMPLIED~~

16 ~~CONTRACT. 7-NOR MAY IT BE based on:~~

17 ~~(1)(A) public policy;~~

18 ~~(2)(B) an implied covenant of good faith and fair~~

19 ~~dealing;~~

20 ~~(3)(C) intentional or negligent interference with~~

21 ~~contractual rights, prospective or otherwise;~~

22 ~~(4)(D) intentional or negligent infliction of~~

23 ~~emotional distress;~~

24 ~~(5) fraud;~~

25 ~~(6) defamation;~~

1 ~~(7)(E) breach of fiduciary duty;~~

2 ~~(8)(F) negligent or intentional misrepresentation; OR~~

3 ~~(9) loss of consortium; or~~

4 ~~(10)(G) negligence.~~

5 ~~(2) THIS SECTION DOES NOT PREEMPT INDEPENDENT CAUSES~~

6 ~~OF ACTION OR INDEPENDENT CLAIMS, OTHER THAN FOR WRONGFUL~~

7 ~~DISCHARGE, UNDER SUBSECTIONS (1)(A) THROUGH (1)(G) SIMPLY~~

8 ~~BECAUSE THEY ARISE IN THE EMPLOYMENT SETTING.~~

9 Section 9. Arbitration. (1) Under a written agreement

10 of the parties, a dispute that otherwise could be

11 adjudicated under [sections 1 through 9] may be resolved by

12 final and binding arbitration as provided in this section.

13 (2) An offer to arbitrate must be in writing and

14 contain the following provisions:

15 (a) A neutral arbitrator must be selected by mutual

16 agreement or, in the absence of agreement, as provided in

17 27-5-211.

18 (b) In the absence of a written agreement to allocate

19 the arbitrator's fees and the arbitration costs, the

20 employer and the employee shall each pay one-half of those

21 fees and costs.

22 (c)(B) The arbitration must be governed by the Uniform

23 Arbitration Act, Title 27, chapter 5. If there is a conflict

24 between the Uniform Arbitration Act and [sections 1 through

25 9], [sections 1 through 9] apply.

1 ~~(d)~~(C) The arbitrator is bound by [sections 1 through
2 9].

3 (3) If a complaint is filed under [sections 1 through
4 9], the offer to arbitrate must be made within 60 days after
5 service of the complaint and must be accepted in writing
6 within 30 days after the date the offer is made.

7 (4) A party who makes a valid offer to arbitrate that
8 is not accepted by the other party and who prevails in an
9 action under [sections 1 through 9] is entitled as an
10 element of costs to reasonable attorney fees incurred
11 subsequent to the date of the offer.

12 (5) A DISCHARGED EMPLOYEE WHO MAKES A VALID OFFER TO
13 ARBITRATE THAT IS ACCEPTED BY THE EMPLOYER AND WHO PREVAILS
14 IN SUCH ARBITRATION IS ENTITLED TO HAVE THE ARBITRATOR'S FEE
15 AND ALL COSTS OF ARBITRATION PAID BY THE EMPLOYER.

16 ~~(5)~~(6) If a valid offer to arbitrate is made and
17 accepted, arbitration is the exclusive remedy for the
18 wrongful discharge dispute and there is no right to bring or
19 continue a lawsuit under [sections 1 through 8]. The
20 arbitrator's award is final and binding, subject to review
21 of the arbitrator's decision under the provisions of the
22 Uniform Arbitration Act.

23 Section 10. Repealer. Sections 39-2-504 and 39-2-505,
24 MCA, are repealed.

25 Section 11. Severability. If a part of this act is

1 invalid, all valid parts that are severable from the invalid
2 part remain in effect. If a part of this act is invalid in
3 one or more of its applications, the part remains in effect
4 in all valid applications that are severable from the
5 invalid applications.

6 Section 12. Applicability. This act applies to claims
7 ~~accruing ARISING~~ after the effective date of this act ~~and to~~
8 ~~claims accruing prior to the effective date of this act that~~
9 ~~have not been filed.~~

10 SECTION 13. EFFECTIVE DATE. THIS ACT IS EFFECTIVE
11 JULY 1, 1987.

-End-