

SB 317 INTRODUCED BY KEATING  
REQUIRE DESIGNATED EMPLOYEES TO SERVE AT DEPARTMENT  
DIRECTORS' DISCRETION

2/11 INTRODUCED  
2/11 REFERRED TO STATE ADMINISTRATION  
2/16 HEARING  
2/19 ADVERSE COMMITTEE REPORT ADOPTED 49 0

1 ~~Senate~~ BILL NO. 317  
2 INTRODUCED BY Secretary

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4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTIONS  
5 2-15-112 AND 49-2-308, MCA, TO REQUIRE DEPUTY DIRECTORS,  
6 DIVISION ADMINISTRATORS, AND BUREAU CHIEFS TO SERVE AT THE  
7 PLEASURE OF DEPARTMENT DIRECTORS AND DEPARTMENT HEADS."

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

10 Section 1. Section 2-15-112, MCA, is amended to read:

11 "2-15-112. Duties and powers of department heads. (1)  
12 Except as otherwise provided by law, each department head  
13 shall:

14 (a) supervise, direct, account for, organize, plan,  
15 administer, and execute the functions vested in the  
16 department by this chapter or other law;

17 (b) establish the policy to be followed by the  
18 department and employees;

19 (c) compile and submit reports and budgets for the  
20 department as required by law or requested by the governor;

21 (d) provide the governor with any information that he  
22 requests at any time on the operation of the department;

23 (e) represent the department in communications with  
24 the governor;

25 (f) prescribe rules, consistent with law and rules

1 established by the governor, for the administration of the  
2 department; the conduct of the employees; the distribution  
3 and performance of business; and the custody, use, and  
4 preservation of the records, documents, and property  
5 pertaining to department business. The lieutenant governor,  
6 secretary of state, attorney general, auditor, and  
7 superintendent of public instruction may prescribe their own  
8 rules for their departments or offices, and the governor may  
9 not prescribe rules for them. The rules described in this  
10 subsection are limited to statements concerning only the  
11 internal management of the agency and not affecting private  
12 rights or procedures available to the public. This section  
13 does not authorize the adoption of any rule as rules are  
14 defined in the Montana Administrative Procedure Act.

15 (g) subject to the approval of the governor, establish  
16 the internal organizational structure of the department and  
17 allocate the functions of the department to units to promote  
18 the economic and efficient administration and operation of  
19 the department. The internal structure of the department  
20 shall be established in accordance with 2-15-104(2).

21 (h) subject to law and the state merit system, if  
22 applicable, establish and make appointments to necessary  
23 subordinate positions and abolish unnecessary positions,  
24 Deputy directors, division administrators, and bureau chiefs  
25 serve at the pleasure of the department head. A department



1 head may remove a deputy director, division administrator,  
 2 or bureau chief at any time, and such removal is exempt from  
 3 the following:

4 (i) grievance proceedings, including but not limited  
 5 to 2-18-1001 through 2-18-1003, 87-1-205, and 87-1-403, or  
 6 rules adopted by an agency or department;

7 (ii) personnel policies or standards adopted by an  
 8 agency or department; or

9 (iii) rules or policies adopted by an agency or  
 10 department implementing personnel evaluation, retention, or  
 11 disciplinary plans.

12 (i) maintain a central office in Helena for the  
 13 department and such other facilities throughout the state as  
 14 may be required for the effective and efficient operation of  
 15 the department.

16 (2) Except as otherwise provided by law, each  
 17 department head may:

18 (a) subject to law and the state merit system, if  
 19 applicable, transfer employees between positions, remove  
 20 persons appointed to positions, and change the duties,  
 21 titles, and compensation of employees within the department;

22 (b) delegate any of the functions vested in the  
 23 department head to subordinate employees;

24 (c) apply for, accept, administer, and expend funds,  
 25 grants, gifts, and loans from the federal government or any

1 other source in administering the department's functions;

2 (d) enter into agreements with federal, state, and  
 3 local agencies necessary to carry out the department's  
 4 functions."

5 Section 2. Section 49-2-308, MCA, is amended to read:  
 6 "49-2-308. Discrimination by the state. It is an  
 7 unlawful discriminatory practice for the state or any of its  
 8 political subdivisions:

9 (1) to refuse, withhold from, or deny to a person any  
 10 local, state, or federal funds, services, goods, facilities,  
 11 advantages, or privileges because of race, creed, religion,  
 12 sex, marital status, color, age, physical or mental  
 13 handicap, or national origin, unless based on reasonable  
 14 grounds;

15 (2) to publish, circulate, issue, display, post, or  
 16 mail a written or printed communication, notice, or  
 17 advertisement which states or implies that any local, state,  
 18 or federal funds, services, goods, facilities, advantages,  
 19 or privileges of the office or agency will be refused,  
 20 withheld from, or denied to a person of a certain race,  
 21 creed, religion, sex, marital status, color, age, physical  
 22 or mental handicap, or national origin or that the patronage  
 23 of a person of a particular race, creed, religion, sex,  
 24 marital status, color, age, or national origin or possessing  
 25 a physical or mental handicap is unwelcome or not desired or

1 solicited, unless based on reasonable grounds;  
2 (3) to refuse employment to a person, to bar him from  
3 employment, or to discriminate against him in compensation  
4 or in a term, condition, or privilege of employment because  
5 of his political beliefs. However, this prohibition does not  
6 apply to policymaking positions on the immediate staff of an  
7 elected officer of the executive branch provided for in  
8 Article VI, section 1, of the Montana constitution, to the  
9 appointment by the governor of a director of a principal  
10 department provided for in Article VI, section 7, of the  
11 Montana constitution, to the appointment by the director of  
12 a deputy director, division administrator, or bureau chief,  
13 or to the immediate staff of the majority and minority  
14 leadership of the Montana legislature."

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