

House BILL NO. 303 *J. Bauer* *Lee* *Harmon*

INTRODUCED BY

Wm. E. Boharski *Victor Clark* *Reuben* *Bill*
McFee *Walt* *Lindgren* *Bergman* *William* *Joe* *Griggs*
John *AKLESTAD* *Rayne* *M. Hansen* *Jason* *Rox*

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING PREFERENTIAL TREATMENT IN EMPLOYMENT

EDUCATION, AND CONTRACTING BY STATE GOVERNMENT, LOCAL GOVERNMENT, PUBLIC SCHOOLS

AND PUBLIC POSTSECONDARY EDUCATIONAL INSTITUTIONS BASED ON RACE, COLOR, ETHNICITY,

NATIONAL ORIGIN, OR SEX; ABOLISHING EXISTING PREFERENCES; AMENDING SECTIONS 2-18-102,

20-25-421, 49-2-303, 49-2-403, 49-3-103, 49-3-201, AND 81-2-120, MCA; AND REPEALING SECTIONS

2-18-111 AND 18-1-110, MCA."

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

NEW SECTION. Section 1. Prohibition against preferential treatment based on race, color,

ethnicity, national origin, or sex. (1) Neither the state nor a county, city, town, school or school district, special district, or other local governmental entity or subdivision of the state, nor the state university system or other postsecondary education institution of the state or of a local governmental entity or subdivision, may grant preferential treatment to an individual or group on the basis of race, color, ethnicity, national origin, or sex in public employment, public education, or public contracting.

(2) This section does not prohibit bona fide qualifications based on sex that are reasonably necessary to the normal operation of public employment, public education, or public contracting.

(3) This section does not prohibit a law or action necessary to establish or maintain eligibility for a federal program if ineligibility would result in a loss of federal funds to the governmental entity subject to the law or action.

(4) Subsection (1) applies to the maximum extent allowed under the Montana constitution and the constitution and laws of the United States.

Section 2. Section 2-18-102, MCA, is amended to read:

"2-18-102. Personnel administration -- general policy setting. (1) Except as otherwise provided by law or collective bargaining agreement, the department shall:

(a) encourage and exercise leadership in the development of effective personnel administration

- 1 within the several agencies in the state and make available the facilities of the department to this end;
- 2 (b) foster and develop programs for recruitment and selection of capable persons for permanent,
3 seasonal, temporary, and other types of positions and for the improvement of employee effectiveness,
4 including training, ethical conduct, safety, health, counseling, welfare, discipline, grievances, and evaluation
5 for productivity and retention in permanent status;
- 6 (c) foster, develop, and promote job sharing in agencies;
- 7 (d) investigate from time to time the operation and effect of parts 1 and 2 of this chapter and the
8 policies made under those parts and report the findings and recommendations to the governor;
- 9 (e) establish policies, procedures, and forms for the maintenance of records of all employees in the
10 state service;
- 11 (f) apply and carry out parts 1 and 2 and the policies under those parts and perform any other
12 lawful acts that may be necessary or desirable to carry out the purposes and provisions of parts 1 and 2.
- 13 (2) The department may delegate authority granted to it under parts 1 and 2 to agencies in the
14 state service that effectively demonstrate the ability to carry out the provisions of parts 1 and 2, provided
15 that the agencies remain in compliance with policies, procedures, timetables, and standards established by
16 the department.
- 17 (3) The department shall develop and issue personnel policies for the state and shall adopt rules
18 to implement this part, ~~except 2-18-111~~. Adequate public notice must be given to all interested parties of
19 proposed changes or additions to the personnel policies before the date on which they are to take effect.
20 If requested by any of the affected parties, the department shall schedule a public hearing on proposed
21 changes or additions to the personnel policies before the date on which they are to take effect.
- 22 (4) The department shall develop model rules of conduct for all state employees based upon the
23 provisions of Title 2, chapter 2. The department shall provide employees with a pamphlet summarizing the
24 provisions of Title 2, chapter 2. Each state agency shall adopt the model rules of conduct and additional
25 rules appropriate to the specific circumstances of the agency."
26
- 27 **Section 3.** Section 20-25-421, MCA, is amended to read:
- 28 **"20-25-421. Charges for tuition -- waivers.** The regents may:
- 29 (1) prescribe tuition rates, matriculation charges, and incidental fees for students in institutions
30 under their jurisdiction;

1 (2) waive nonresident tuition for selected and approved nonresident students, not to exceed at any
 2 unit 2% of the full-time equivalent enrollment at that unit during the preceding year; except that when
 3 necessary tuition may be waived in excess of 2% of unit enrollment for nonresident students who enroll
 4 under provisions of any WICHE-sponsored state reciprocal agreements which provide for the payment,
 5 where required, of the student support fee by the reciprocal state;

6 (3) waive resident tuition for students at least 62 years of age;

7 (4) waive tuition and fees for:

8 ~~(a) persons of one-fourth Indian blood or more who have been bona fide residents of Montana for~~
 9 ~~at least 1 year prior to enrollment in the Montana university system;~~

10 ~~(b)~~ persons designated by the department of corrections pursuant to 52-5-112;

11 ~~(c)~~ residents of Montana who served with the armed forces of the United States in any of its
 12 wars and who were honorably discharged from military service;

13 ~~(d)~~ children of residents of Montana who served with the armed forces of the United States in
 14 any of its wars and who were killed in action or died as a result of injury, disease, or other disability
 15 incurred while in the service of the armed forces of the United States; or

16 ~~(e)~~ the spouses or children of residents of Montana who have been declared to be prisoners of
 17 war or missing in action;

18 (5) waive tuition charges for qualified survivors of Montana firefighters or peace officers killed in
 19 the course and scope of employment. For purposes of this subsection, a qualified survivor is a person who
 20 meets the entrance requirements at the state university or college of the person's choice and is the
 21 surviving spouse or child of any of the following who were killed in the course and scope of employment:

22 (a) a paid or volunteer member of a municipal or rural fire department;

23 (b) a law enforcement officer as defined in 7-32-201; or

24 (c) a full-time highway patrol officer."

25
 26 **Section 4.** Section 49-2-303, MCA, is amended to read:

27 **"49-2-303. Discrimination in employment.** (1) It is an unlawful discriminatory practice for:

28 (a) an employer to refuse employment to a person, to bar a person from employment, or to
 29 discriminate against a person in compensation or in a term, condition, or privilege of employment because
 30 of race, creed, religion, color, or national origin or because of age, physical or mental disability, marital

1 status, or sex when the reasonable demands of the position do not require an age, physical or mental
2 disability, marital status, or sex distinction;

3 (b) a labor organization or joint labor management committee controlling apprenticeship to exclude
4 or expel any person from its membership or from an apprenticeship or training program or to discriminate
5 in any way against a member of or an applicant to the labor organization or an employer or employee
6 because of race, creed, religion, color, or national origin or because of age, physical or mental disability,
7 marital status, or sex when the reasonable demands of the program do not require an age, physical or
8 mental disability, marital status, or sex distinction;

9 (c) an employer or employment agency to print or circulate or cause to be printed or circulated a
10 statement, advertisement, or publication or to use an employment application that expresses, directly or
11 indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental
12 disability, race, creed, religion, color, or national origin or an intent to make the limitation, unless based
13 upon a bona fide occupational qualification;

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

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

19 (3) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not
20 be construed as a violation of this section.

21 ~~(4) The application of a hiring preference as provided for in 2-18-111 and 18-1-110 may not be~~
22 ~~construed to be a violation of this section.~~

23 ~~(5) It is not a violation of the prohibition against marital status discrimination in this section for an~~
24 ~~employer or labor organization to provide greater or additional contributions to a bona fide group insurance~~
25 ~~plan for employees with dependents than to those employees without dependents or with fewer~~
26 ~~dependents."~~

27

28 **Section 5.** Section 49-2-403, MCA, is amended to read:

29 **"49-2-403. Specific limits on justification.** (1) Except as permitted in 49-2-303(3) through (5) and
30 49-3-201(5), sex, marital status, age, physical or mental disability, race, creed, religion, color, or national

1 origin may not comprise justification for discrimination ~~except for the legally demonstrable purpose of~~
 2 ~~correcting a previous discriminatory practice.~~

3 (2) Age or mental disability may represent a legitimate discriminatory criterion in credit transactions
 4 only as it relates to a person's capacity to make or be bound by contracts or other obligations."
 5

6 **Section 6.** Section 49-3-103, MCA, is amended to read:

7 **"49-3-103. Permitted distinctions.** (1) ~~Nothing in this~~ This chapter ~~prohibits any~~ does not prohibit
 8 a public employer:

9 (a) from enforcing a differentiation based on marital status, age, or physical or mental disability
 10 when based on a bona fide occupational qualification reasonably necessary to the normal operation of the
 11 particular business or ~~where~~ when the differentiation is based on reasonable factors other than age;

12 (b) from observing the terms of a bona fide seniority system or any bona fide employee benefit
 13 plan, such as a retirement, pension, or insurance plan, that is not a subterfuge to evade the purposes of
 14 this chapter, except that an employee benefit plan may not excuse the failure to hire any individual;

15 (c) from discharging or otherwise disciplining an individual for good cause; or

16 (d) from providing greater or additional contributions to a bona fide group insurance plan for
 17 employees with dependents than to those employees without dependents or with fewer dependents.

18 (2) The application of an employment preference as provided for in ~~2-18-111, 10-2-402, 18-1-110,~~
 19 and Title 39, chapter 29 or 30, by a public employer, as defined in 39-29-101 and 39-30-103, may not be
 20 construed to constitute a violation of this chapter."
 21

22 **Section 7.** Section 49-3-201, MCA, is amended to read:

23 **"49-3-201. Employment of state and local government personnel.** (1) State and local government
 24 officials and supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on
 25 the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age,
 26 marital status, physical or mental disability, or national origin.

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

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

30 (b) regularly review their personnel practices to ~~assure~~ ensure compliance; and

1 (c) conduct continuing orientation and training programs with emphasis on human relations and
2 fair employment practices.

3 (3) The department of administration shall ensure that the entire examination process, including
4 appraisal of qualifications, is free from bias.

5 ~~(4) Appointing authorities shall exercise care to ensure utilization of minority group persons.~~

6 ~~(5)~~ Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not
7 be construed as a violation of this section."

8

9 **Section 8.** Section 81-2-120, MCA, is amended to read:

10 **"81-2-120. Management of wild buffalo or bison for disease control.** (1) Whenever a publicly
11 owned wild buffalo or bison from a herd that is infected with a dangerous disease enters the state of
12 Montana on public or private land and the disease may spread to persons or livestock or whenever the
13 presence of wild buffalo or bison may jeopardize Montana's compliance with federally administered
14 livestock disease control programs, the department may, under a plan approved by the governor, use any
15 feasible method in taking one or more of the following actions:

16 (a) The live wild buffalo or bison may be physically removed by the safest and most expeditious
17 means from within the state boundaries, including but not limited to hazing and aversion tactics or capture,
18 transportation, or delivery to a department-approved slaughterhouse.

19 (b) The live wild buffalo or bison may be destroyed by the use of firearms. If a firearm cannot be
20 used for reasons of public safety or regard for public or private property, the animal may be relocated to
21 a place that is free from public or private hazards and destroyed by firearms or by a humane means of
22 euthanasia.

23 (2) Whenever the department is responsible for the death of a wild buffalo or bison, either
24 purposefully or unintentionally, the carcass of the animal must be disposed of by the most economical
25 means, including but not limited to burying, incineration, rendering, or field dressing for donation or delivery
26 to a department-approved slaughterhouse or slaughter destination.

27 (3) In disposing of the carcass, the department:

28 (a) as first priority, may donate a wild buffalo or bison carcass to a charity ~~or to an Indian tribal~~
29 ~~organization;~~ or

30 (b) may sell a wild buffalo or bison carcass to help defray expenses of the department. If the

1 carcass is sold in this manner, the department shall deposit any revenue derived from the sale of the wild
2 buffalo or bison carcass to the state special revenue fund to the credit of the department.

3 (4) The department may adopt rules with regard to management of publicly owned wild buffalo or
4 bison that enter Montana on private or public land and that are from a herd that is infected with a
5 contagious disease that may spread to persons or livestock and may jeopardize compliance with federally
6 administered livestock disease control programs."

7

8 **NEW SECTION.** **Section 9. Repealer.** Sections 2-18-111 and 18-1-110, MCA, are repealed.

9

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

14

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0303, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

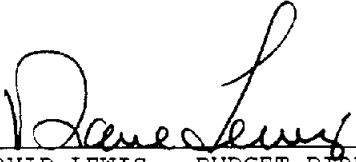
A bill prohibiting preferential treatment in employment, education, and contracting by state government, local government, public schools and public postsecondary educational institutions based on race, color, ethnicity, national origin or sex, and abolishing existing preferences.

ASSUMPTIONS:

1. Is it assumed that the only fiscal impact of this bill relates to mandatory tuition fee waivers granted to Indians attending state colleges and universities.
2. In FY97 the university system granted \$923,400 in Indian fee waivers to 502 students, or \$1,840 per student. It is assumed that those amounts would remain constant in the 1999 biennium if this bill failed.
3. If HB303 passes, it is assumed that 50% of the students who received fee waivers under 20-25-421(4)(a), MCA, would not return to a state university facility in the 1999 biennium. It should be emphasized that this percent is purely a guesstimate for the sake of this fiscal note.
4. The state general fund currently contributes \$1,861 to the university system for each student FTE who attends a 4-year institution (the general fund amount is \$1,643 for 2-year colleges, so for the sake of this bill it is assumed that all affected students attend 4-year institutions). Therefore, the general fund would be reduced by \$467,000 (502 x 50% x \$1,861).
5. To record fee waivers in the accounting system, the university system currently records \$923,400 as a tuition revenue, and offsets that by a \$923,400 entry to fee waiver expense for a net tuition impact of zero. Under the proposed law, an entry to increase tuition revenue by \$462,000 (502 x 50% x \$1,840) would be booked.
6. To add some validity to the above numbers, two additional assumptions are made: 1) the university system will adopt the intent of this bill if it is passed, and 2) other mandatory fee waivers (e.g., veterans) will not increase by the amount reduced.

FISCAL IMPACT:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
General fund (01)	(\$467,000)	(\$467,000)
<u>Revenues:</u>		
University net tuition	462,000	462,000
<u>Net Impact on Fund Balance: (Revenue minus expenditures)</u>		
General fund (01)	\$467,000	\$467,000

 1-27-97
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

WILLIAM BOHARSKI, PRIMARY SPONSOR DATE
Fiscal Note for HB0303, as introduced

HB 303

1 HOUSE BILL NO. 303

2 INTRODUCED BY ADAMS, BOHARSKI, VICK, PROUSE, CLARK, REHBEIN, GAGE, BAER, LAWSON,
3 HARGROVE, MCGEE, WELLS, SIMPKINS, BERGMAN, WALTERS, JORE, GRINDE, HAYNE,
4 M. HANSON, KASTEN, JENKINS, AKLESTAD, KNOX, BOOKOUT, TOEWS, KEATING, SLITER
5

6 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING PREFERENTIAL TREATMENT IN EMPLOYMENT,
7 EDUCATION, AND CONTRACTING BY STATE GOVERNMENT, LOCAL GOVERNMENT, PUBLIC SCHOOLS,
8 AND PUBLIC POSTSECONDARY EDUCATIONAL INSTITUTIONS BASED ON RACE, COLOR, ETHNICITY,
9 NATIONAL ORIGIN, OR SEX; ABOLISHING EXISTING PREFERENCES; AMENDING SECTIONS 2-18-102,
10 20-25-421, 49-2-303, 49-2-403, 49-3-103, 49-3-201, AND 81-2-120, MCA; AND REPEALING SECTIONS
11 2-18-111 AND 18-1-110, MCA."
12

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
14

15 NEW SECTION. **Section 1. Prohibition against preferential treatment based on race, color,**
16 **ethnicity, national origin, or sex.** (1) Neither the state nor a county, city, town, school or school district,
17 special district, or other local governmental entity or subdivision of the state, nor the state university
18 system or other postsecondary education institution of the state or of a local governmental entity or
19 subdivision, may grant preferential treatment to an individual or group on the basis of race, color, ethnicity,
20 national origin, or sex in public employment, public education, or public contracting.

21 (2) This section does not prohibit bona fide qualifications based on sex that are reasonably
22 necessary to the normal operation of public employment, public education, or public contracting.

23 (3) This section does not prohibit a law or action necessary to establish or maintain eligibility for
24 a federal program if ineligibility would result in a loss of federal funds to the governmental entity subject
25 to the law or action.

26 (4) Subsection (1) applies to the maximum extent allowed under the Montana constitution and the
27 constitution and laws of the United States.
28

29 **Section 2.** Section 2-18-102, MCA, is amended to read:

30 **"2-18-102. Personnel administration -- general policy setting.** (1) Except as otherwise provided

1 by law or collective bargaining agreement, the department shall:

2 (a) encourage and exercise leadership in the development of effective personnel administration
3 within the several agencies in the state and make available the facilities of the department to this end;

4 (b) foster and develop programs for recruitment and selection of capable persons for permanent,
5 seasonal, temporary, and other types of positions and for the improvement of employee effectiveness,
6 including training, ethical conduct, safety, health, counseling, welfare, discipline, grievances, and evaluation
7 for productivity and retention in permanent status;

8 (c) foster, develop, and promote job sharing in agencies;

9 (d) investigate from time to time the operation and effect of parts 1 and 2 of this chapter and the
10 policies made under those parts and report the findings and recommendations to the governor;

11 (e) establish policies, procedures, and forms for the maintenance of records of all employees in the
12 state service;

13 (f) apply and carry out parts 1 and 2 and the policies under those parts and perform any other
14 lawful acts that may be necessary or desirable to carry out the purposes and provisions of parts 1 and 2.

15 (2) The department may delegate authority granted to it under parts 1 and 2 to agencies in the
16 state service that effectively demonstrate the ability to carry out the provisions of parts 1 and 2, provided
17 that the agencies remain in compliance with policies, procedures, timetables, and standards established by
18 the department.

19 (3) The department shall develop and issue personnel policies for the state and shall adopt rules
20 to implement this part, ~~except 2-18-111~~. Adequate public notice must be given to all interested parties of
21 proposed changes or additions to the personnel policies before the date on which they are to take effect.
22 If requested by any of the affected parties, the department shall schedule a public hearing on proposed
23 changes or additions to the personnel policies before the date on which they are to take effect.

24 (4) The department shall develop model rules of conduct for all state employees based upon the
25 provisions of Title 2, chapter 2. The department shall provide employees with a pamphlet summarizing the
26 provisions of Title 2, chapter 2. Each state agency shall adopt the model rules of conduct and additional
27 rules appropriate to the specific circumstances of the agency."
28

29 **Section 3.** Section 20-25-421, MCA, is amended to read:

30 **"20-25-421. Charges for tuition -- waivers.** The regents may:

1 (1) prescribe tuition rates, matriculation charges, and incidental fees for students in institutions
2 under their jurisdiction;

3 (2) waive nonresident tuition for selected and approved nonresident students, not to exceed at any
4 unit 2% of the full-time equivalent enrollment at that unit during the preceding year; except that when
5 necessary tuition may be waived in excess of 2% of unit enrollment for nonresident students who enroll
6 under provisions of any WICHE-sponsored state reciprocal agreements which provide for the payment,
7 where required, of the student support fee by the reciprocal state;

8 (3) waive resident tuition for students at least 62 years of age;

9 (4) waive tuition and fees for:

10 (a) ~~persons of one-fourth Indian blood or more who have been bona fide residents of Montana for~~
11 ~~at least 1 year prior to enrollment in the Montana university system;~~ PERSONS WHO HAVE BEEN BONA
12 FIDE RESIDENTS OF MONTANA FOR AT LEAST 1 YEAR PRIOR TO ENROLLMENT IN THE MONTANA
13 UNIVERSITY SYSTEM;

14 ~~(b)~~(B) persons designated by the department of corrections pursuant to 52-5-112;

15 ~~(c)~~(C) residents of Montana who served with the armed forces of the United States in any of
16 its wars and who were honorably discharged from military service;

17 ~~(d)~~(D) children of residents of Montana who served with the armed forces of the United States
18 in any of its wars and who were killed in action or died as a result of injury, disease, or other disability
19 incurred while in the service of the armed forces of the United States; or

20 ~~(e)~~(E) the spouses or children of residents of Montana who have been declared to be prisoners
21 of war or missing in action;

22 (5) waive tuition charges for qualified survivors of Montana firefighters or peace officers killed in
23 the course and scope of employment. For purposes of this subsection, a qualified survivor is a person who
24 meets the entrance requirements at the state university or college of the person's choice and is the
25 surviving spouse or child of any of the following who were killed in the course and scope of employment:

26 (a) a paid or volunteer member of a municipal or rural fire department;

27 (b) a law enforcement officer as defined in 7-32-201; or

28 (c) a full-time highway patrol officer."

29

30 **Section 4.** Section 49-2-303, MCA, is amended to read:

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

2 (a) an employer to refuse employment to a person, to bar a person from employment, or to
3 discriminate against a person in compensation or in a term, condition, or privilege of employment because
4 of race, creed, religion, color, or national origin or because of age, physical or mental disability, marital
5 status, or sex when the reasonable demands of the position do not require an age, physical or mental
6 disability, marital status, or sex distinction;

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

13 (c) an employer or employment agency to print or circulate or cause to be printed or circulated a
14 statement, advertisement, or publication or to use an employment application that expresses, directly or
15 indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental
16 disability, race, creed, religion, color, or national origin or an intent to make the limitation, unless based
17 upon a bona fide occupational qualification;

18 (d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to
19 discriminate against any individual because of sex, marital status, age, physical or mental disability, race,
20 creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

21 (2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications must
22 be strictly construed.

23 (3) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not
24 be construed as a violation of this section.

25 ~~(4) The application of a hiring preference as provided for in 2-18-111 and 18-1-110 may not be~~
26 ~~construed to be a violation of this section.~~

27 ~~(5) It is not a violation of the prohibition against marital status discrimination in this section for an~~
28 ~~employer or labor organization to provide greater or additional contributions to a bona fide group insurance~~
29 ~~plan for employees with dependents than to those employees without dependents or with fewer~~
30 ~~dependents."~~

1 **Section 5.** Section 49-2-403, MCA, is amended to read:

2 "**49-2-403. Specific limits on justification.** (1) Except as permitted in 49-2-303(3) through (5) and
3 49-3-201(5), sex, marital status, age, physical or mental disability, race, creed, religion, color, or national
4 origin may not comprise justification for discrimination ~~except for the legally demonstrable purpose of~~
5 ~~correcting a previous discriminatory practice.~~

6 (2) Age or mental disability may represent a legitimate discriminatory criterion in credit transactions
7 only as it relates to a person's capacity to make or be bound by contracts or other obligations."
8

9 **Section 6.** Section 49-3-103, MCA, is amended to read:

10 "**49-3-103. Permitted distinctions.** (1) ~~Nothing in this~~ This chapter prohibits any ~~does not prohibit~~
11 a public employer:

12 (a) from enforcing a differentiation based on marital status, age, or physical or mental disability
13 when based on a bona fide occupational qualification reasonably necessary to the normal operation of the
14 particular business or ~~where~~ when the differentiation is based on reasonable factors other than age;

15 (b) from observing the terms of a bona fide seniority system or any bona fide employee benefit
16 plan, such as a retirement, pension, or insurance plan, that is not a subterfuge to evade the purposes of
17 this chapter, except that an employee benefit plan may not excuse the failure to hire any individual;

18 (c) from discharging or otherwise disciplining an individual for good cause; or

19 (d) from providing greater or additional contributions to a bona fide group insurance plan for
20 employees with dependents than to those employees without dependents or with fewer dependents.

21 (2) The application of an employment preference as provided for in ~~2-18-111, 10-2-402, 18-1-110,~~
22 and Title 39, chapter 29 or 30, by a public employer, as defined in 39-29-101 and 39-30-103, may not be
23 construed to constitute a violation of this chapter."
24

25 **Section 7.** Section 49-3-201, MCA, is amended to read:

26 "**49-3-201. Employment of state and local government personnel.** (1) State and local government
27 officials and supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on
28 the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age,
29 marital status, physical or mental disability, or national origin.

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

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

3 (b) regularly review their personnel practices to ~~assure~~ ensure compliance; and

4 (c) conduct continuing orientation and training programs with emphasis on human relations and
5 fair employment practices.

6 (3) The department of administration shall ensure that the entire examination process, including
7 appraisal of qualifications, is free from bias.

8 ~~(4) Appointing authorities shall exercise care to ensure utilization of minority group persons.~~

9 ~~(5) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not~~
10 ~~be construed as a violation of this section."~~

11
12 **Section 8.** Section 81-2-120, MCA, is amended to read:

13 **"81-2-120. Management of wild buffalo or bison for disease control.** (1) Whenever a publicly
14 owned wild buffalo or bison from a herd that is infected with a dangerous disease enters the state of
15 Montana on public or private land and the disease may spread to persons or livestock or whenever the
16 presence of wild buffalo or bison may jeopardize Montana's compliance with federally administered
17 livestock disease control programs, the department may, under a plan approved by the governor, use any
18 feasible method in taking one or more of the following actions:

19 (a) The live wild buffalo or bison may be physically removed by the safest and most expeditious
20 means from within the state boundaries, including but not limited to hazing and aversion tactics or capture,
21 transportation, or delivery to a department-approved slaughterhouse.

22 (b) The live wild buffalo or bison may be destroyed by the use of firearms. If a firearm cannot be
23 used for reasons of public safety or regard for public or private property, the animal may be relocated to
24 a place that is free from public or private hazards and destroyed by firearms or by a humane means of
25 euthanasia.

26 (2) Whenever the department is responsible for the death of a wild buffalo or bison, either
27 purposefully or unintentionally, the carcass of the animal must be disposed of by the most economical
28 means, including but not limited to burying, incineration, rendering, or field dressing for donation or delivery
29 to a department-approved slaughterhouse or slaughter destination.

30 (3) In disposing of the carcass, the department:

1 (a) as first priority, may donate a wild buffalo or bison carcass to a charity ~~or to an Indian tribal~~
2 ~~organization~~; or

3 (b) may sell a wild buffalo or bison carcass to help defray expenses of the department. If the
4 carcass is sold in this manner, the department shall deposit any revenue derived from the sale of the wild
5 buffalo or bison carcass to the state special revenue fund to the credit of the department.

6 (4) The department may adopt rules with regard to management of publicly owned wild buffalo or
7 bison that enter Montana on private or public land and that are from a herd that is infected with a
8 contagious disease that may spread to persons or livestock and may jeopardize compliance with federally
9 administered livestock disease control programs."

10

11 **NEW SECTION. Section 9. Repealer.** Sections 2-18-111 and 18-1-110, MCA, are repealed.

12

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

17

-END-

HOUSE BILL NO. 303

INTRODUCED BY ADAMS, BOHARSKI, VICK, PROUSE, CLARK, REHBEIN, GAGE, BAER, LAWSON,
HARGROVE, MCGEE, WELLS, SIMPKINS, BERGMAN, WALTERS, JORE, GRINDE, HAYNE,
M. HANSON, KASTEN, JENKINS, AKLESTAD, KNOX, BOOKOUT, TOEWS, KEATING, SLITER

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING PREFERENTIAL TREATMENT IN EMPLOYMENT,
EDUCATION, AND CONTRACTING BY STATE GOVERNMENT, LOCAL GOVERNMENT, PUBLIC SCHOOLS,
AND PUBLIC POSTSECONDARY EDUCATIONAL INSTITUTIONS BASED ON RACE, COLOR, ETHNICITY,
NATIONAL ORIGIN, OR SEX; ABOLISHING EXISTING PREFERENCES; AMENDING SECTIONS 2-18-102,
20-25-421, 49-2-303, 49-2-403, 49-3-103, AND 49-3-201, ~~AND 81-2-120~~, MCA; AND REPEALING
SECTIONS 2-18-111 AND 18-1-110, MCA."

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

NEW SECTION. **Section 1. Prohibition against preferential treatment based on race, color, ethnicity, national origin, or sex.** (1) Neither the state nor a county, city, town, school or school district, special district, or other local governmental entity or subdivision of the state, nor the state university system or other postsecondary education institution of the state or of a local governmental entity or subdivision, may grant preferential treatment to an individual or group on the basis of race, color, ethnicity, national origin, or sex in public employment, public education, or public contracting.

(2) This section does not prohibit bona fide qualifications based on sex that are reasonably necessary to the normal operation of public employment, public education, or public contracting.

(3) This section does not prohibit a law or action necessary to establish or maintain eligibility for a federal program if ineligibility would result in a loss of federal funds to the governmental entity subject to the law or action.

(4) Subsection (1) applies to the maximum extent allowed under the Montana constitution and the constitution and laws of the United States.

Section 2. Section 2-18-102, MCA, is amended to read:

"2-18-102. Personnel administration -- general policy setting. (1) Except as otherwise provided

1 by law or collective bargaining agreement, the department shall:

2 (a) encourage and exercise leadership in the development of effective personnel administration
3 within the several agencies in the state and make available the facilities of the department to this end;

4 (b) foster and develop programs for recruitment and selection of capable persons for permanent,
5 seasonal, temporary, and other types of positions and for the improvement of employee effectiveness,
6 including training, ethical conduct, safety, health, counseling, welfare, discipline, grievances, and evaluation
7 for productivity and retention in permanent status;

8 (c) foster, develop, and promote job sharing in agencies;

9 (d) investigate from time to time the operation and effect of parts 1 and 2 of this chapter and the
10 policies made under those parts and report the findings and recommendations to the governor;

11 (e) establish policies, procedures, and forms for the maintenance of records of all employees in the
12 state service;

13 (f) apply and carry out parts 1 and 2 and the policies under those parts and perform any other
14 lawful acts that may be necessary or desirable to carry out the purposes and provisions of parts 1 and 2.

15 (2) The department may delegate authority granted to it under parts 1 and 2 to agencies in the
16 state service that effectively demonstrate the ability to carry out the provisions of parts 1 and 2, provided
17 that the agencies remain in compliance with policies, procedures, timetables, and standards established by
18 the department.

19 (3) The department shall develop and issue personnel policies for the state and shall adopt rules
20 to implement this part, ~~except 2-18-111~~. Adequate public notice must be given to all interested parties of
21 proposed changes or additions to the personnel policies before the date on which they are to take effect.
22 If requested by any of the affected parties, the department shall schedule a public hearing on proposed
23 changes or additions to the personnel policies before the date on which they are to take effect.

24 (4) The department shall develop model rules of conduct for all state employees based upon the
25 provisions of Title 2, chapter 2. The department shall provide employees with a pamphlet summarizing the
26 provisions of Title 2, chapter 2. Each state agency shall adopt the model rules of conduct and additional
27 rules appropriate to the specific circumstances of the agency."

28

29 **Section 3.** Section 20-25-421, MCA, is amended to read:

30 **"20-25-421. Charges for tuition -- waivers.** The regents may:

1 (1) prescribe tuition rates, matriculation charges, and incidental fees for students in institutions
2 under their jurisdiction;

3 (2) waive nonresident tuition for selected and approved nonresident students, not to exceed at any
4 unit 2% of the full-time equivalent enrollment at that unit during the preceding year; except that when
5 necessary tuition may be waived in excess of 2% of unit enrollment for nonresident students who enroll
6 under provisions of any WICHE-sponsored state reciprocal agreements which provide for the payment,
7 where required, of the student support fee by the reciprocal state;

8 (3) waive resident tuition for students at least 62 years of age;

9 (4) waive tuition and fees for:

10 (a) ~~persons of one fourth Indian blood or more who have been bona fide residents of Montana for~~
11 ~~at least 1 year prior to enrollment in the Montana university system;~~ PERSONS WHO HAVE BEEN BONA
12 FIDE RESIDENTS OF MONTANA FOR AT LEAST 1 YEAR PRIOR TO ENROLLMENT IN THE MONTANA
13 UNIVERSITY SYSTEM;

14 ~~(b)~~(B) persons designated by the department of corrections pursuant to 52-5-112;

15 ~~(c)~~(b)(C) residents of Montana who served with the armed forces of the United States in any of
16 its wars and who were honorably discharged from military service;

17 ~~(d)~~(e)(D) children of residents of Montana who served with the armed forces of the United States
18 in any of its wars and who were killed in action or died as a result of injury, disease, or other disability
19 incurred while in the service of the armed forces of the United States; or

20 ~~(e)~~(d)(E) the spouses or children of residents of Montana who have been declared to be prisoners
21 of war or missing in action;

22 (5) waive tuition charges for qualified survivors of Montana firefighters or peace officers killed in
23 the course and scope of employment. For purposes of this subsection, a qualified survivor is a person who
24 meets the entrance requirements at the state university or college of the person's choice and is the
25 surviving spouse or child of any of the following who were killed in the course and scope of employment:

26 (a) a paid or volunteer member of a municipal or rural fire department;

27 (b) a law enforcement officer as defined in 7-32-201; or

28 (c) a full-time highway patrol officer."

29

30 **Section 4.** Section 49-2-303, MCA, is amended to read:

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

2 (a) an employer to refuse employment to a person, to bar a person from employment, or to
3 discriminate against a person in compensation or in a term, condition, or privilege of employment because
4 of race, creed, religion, color, or national origin or because of age, physical or mental disability, marital
5 status, or sex when the reasonable demands of the position do not require an age, physical or mental
6 disability, marital status, or sex distinction;

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

13 (c) an employer or employment agency to print or circulate or cause to be printed or circulated a
14 statement, advertisement, or publication or to use an employment application that expresses, directly or
15 indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental
16 disability, race, creed, religion, color, or national origin or an intent to make the limitation, unless based
17 upon a bona fide occupational qualification;

18 (d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to
19 discriminate against any individual because of sex, marital status, age, physical or mental disability, race,
20 creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

21 (2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications must
22 be strictly construed.

23 (3) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not
24 be construed as a violation of this section.

25 ~~(4) The application of a hiring preference as provided for in 2-18-111 and 18-1-110 may not be~~
26 ~~construed to be a violation of this section.~~

27 ~~(5)~~ It is not a violation of the prohibition against marital status discrimination in this section for an
28 employer or labor organization to provide greater or additional contributions to a bona fide group insurance
29 plan for employees with dependents than to those employees without dependents or with fewer
30 dependents."

1 **Section 5.** Section 49-2-403, MCA, is amended to read:

2 **"49-2-403. Specific limits on justification.** (1) Except as permitted in 49-2-303(3) through (5) and
3 49-3-201(5), sex, marital status, age, physical or mental disability, race, creed, religion, color, or national
4 origin may not comprise justification for discrimination ~~except for the legally demonstrable purpose of~~
5 ~~correcting a previous discriminatory practice.~~

6 (2) Age or mental disability may represent a legitimate discriminatory criterion in credit transactions
7 only as it relates to a person's capacity to make or be bound by contracts or other obligations."
8

9 **Section 6.** Section 49-3-103, MCA, is amended to read:

10 **"49-3-103. Permitted distinctions.** (1) ~~Nothing in this~~ This chapter prohibits any ~~does not prohibit~~
11 a public employer:

12 (a) from enforcing a differentiation based on marital status, age, or physical or mental disability
13 when based on a bona fide occupational qualification reasonably necessary to the normal operation of the
14 particular business or ~~where~~ when the differentiation is based on reasonable factors other than age;

15 (b) from observing the terms of a bona fide seniority system or any bona fide employee benefit
16 plan, such as a retirement, pension, or insurance plan, that is not a subterfuge to evade the purposes of
17 this chapter, except that an employee benefit plan may not excuse the failure to hire any individual;

18 (c) from discharging or otherwise disciplining an individual for good cause; or

19 (d) from providing greater or additional contributions to a bona fide group insurance plan for
20 employees with dependents than to those employees without dependents or with fewer dependents.

21 (2) The application of an employment preference as provided for in ~~2-18-111, 10-2-402, 18-1-110,~~
22 and Title 39, chapter 29 or 30, by a public employer, as defined in 39-29-101 and 39-30-103, may not be
23 construed to constitute a violation of this chapter."
24

25 **Section 7.** Section 49-3-201, MCA, is amended to read:

26 **"49-3-201. Employment of state and local government personnel.** (1) State and local government
27 officials and supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on
28 the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age,
29 marital status, physical or mental disability, or national origin.

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

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

3 (b) regularly review their personnel practices to ~~assure~~ ensure compliance; and

4 (c) conduct continuing orientation and training programs with emphasis on human relations and
5 fair employment practices.

6 (3) The department of administration shall ensure that the entire examination process, including
7 appraisal of qualifications, is free from bias.

8 ~~(4) Appointing authorities shall exercise care to ensure utilization of minority group persons.~~

9 ~~(5) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not~~
10 ~~be construed as a violation of this section."~~

11
12 ~~Section 8. Section 81-2-120, MCA, is amended to read:~~

13 ~~"81-2-120. Management of wild buffalo or bison for disease control. (1) Whenever a publicly~~
14 ~~owned wild buffalo or bison from a herd that is infected with a dangerous disease enters the state of~~
15 ~~Montana on public or private land and the disease may spread to persons or livestock or whenever the~~
16 ~~presence of wild buffalo or bison may jeopardize Montana's compliance with federally administered~~
17 ~~livestock disease control programs, the department may, under a plan approved by the governor, use any~~
18 ~~feasible method in taking one or more of the following actions:~~

19 ~~(a) The live wild buffalo or bison may be physically removed by the safest and most expeditious~~
20 ~~means from within the state boundaries, including but not limited to hazing and aversion tactics or capture,~~
21 ~~transportation, or delivery to a department approved slaughterhouse.~~

22 ~~(b) The live wild buffalo or bison may be destroyed by the use of firearms. If a firearm cannot be~~
23 ~~used for reasons of public safety or regard for public or private property, the animal may be relocated to~~
24 ~~a place that is free from public or private hazards and destroyed by firearms or by a humane means of~~
25 ~~euthanasia.~~

26 ~~(2) Whenever the department is responsible for the death of a wild buffalo or bison, either~~
27 ~~purposefully or unintentionally, the carcass of the animal must be disposed of by the most economical~~
28 ~~means, including but not limited to burying, incineration, rendering, or field dressing for donation or delivery~~
29 ~~to a department approved slaughterhouse or slaughter destination.~~

30 ~~(3) In disposing of the carcass, the department:~~

MOTION TO TAKE FROM TABLE,
PRINT & PLACE ON 2ND READING

JUDICIARY COMMITTEE

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6 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING PREFERENTIAL TREATMENT IN EMPLOYMENT,
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11 SECTIONS 2-18-111 AND 18-1-110, MCA."

12

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

14

15 NEW SECTION. Section 1. Prohibition against preferential treatment based on race, color,
16 ethnicity, national origin, or sex. (1) Neither the state nor a county, city, town, school or school district,
17 special district, or other local governmental entity or subdivision of the state, nor the state university
18 system or other postsecondary education institution of the state or of a local governmental entity or
19 subdivision, may grant preferential treatment to an individual or group on the basis of race, color, ethnicity,
20 national origin, or sex in public employment, public education, or public contracting.

21 (2) This section does not prohibit bona fide qualifications based on sex that are reasonably
22 necessary to the normal operation of public employment, public education, or public contracting.

23 (3) This section does not prohibit a law or action necessary to establish or maintain eligibility for
24 a federal program if ineligibility would result in a loss of federal funds to the governmental entity subject
25 to the law or action.

26 (4) Subsection (1) applies to the maximum extent allowed under the Montana constitution and the
27 constitution and laws of the United States.

28

29 Section 2. Section 2-18-102, MCA, is amended to read:

30 "2-18-102. Personnel administration -- general policy setting. (1) Except as otherwise provided

1 by law or collective bargaining agreement, the department shall:

2 (a) encourage and exercise leadership in the development of effective personnel administration
3 within the several agencies in the state and make available the facilities of the department to this end;

4 (b) foster and develop programs for recruitment and selection of capable persons for permanent,
5 seasonal, temporary, and other types of positions and for the improvement of employee effectiveness,
6 including training, ethical conduct, safety, health, counseling, welfare, discipline, grievances, and evaluation
7 for productivity and retention in permanent status;

8 (c) foster, develop, and promote job sharing in agencies;

9 (d) investigate from time to time the operation and effect of parts 1 and 2 of this chapter and the
10 policies made under those parts and report the findings and recommendations to the governor;

11 (e) establish policies, procedures, and forms for the maintenance of records of all employees in the
12 state service;

13 (f) apply and carry out parts 1 and 2 and the policies under those parts and perform any other
14 lawful acts that may be necessary or desirable to carry out the purposes and provisions of parts 1 and 2.

15 (2) The department may delegate authority granted to it under parts 1 and 2 to agencies in the
16 state service that effectively demonstrate the ability to carry out the provisions of parts 1 and 2, provided
17 that the agencies remain in compliance with policies, procedures, timetables, and standards established by
18 the department.

19 (3) The department shall develop and issue personnel policies for the state and shall adopt rules
20 to implement this part, ~~except 2-18-111~~. Adequate public notice must be given to all interested parties of
21 proposed changes or additions to the personnel policies before the date on which they are to take effect.
22 If requested by any of the affected parties, the department shall schedule a public hearing on proposed
23 changes or additions to the personnel policies before the date on which they are to take effect.

24 (4) The department shall develop model rules of conduct for all state employees based upon the
25 provisions of Title 2, chapter 2. The department shall provide employees with a pamphlet summarizing the
26 provisions of Title 2, chapter 2. Each state agency shall adopt the model rules of conduct and additional
27 rules appropriate to the specific circumstances of the agency."

28

29 **Section 3.** Section 20-25-421, MCA, is amended to read:

30 **"20-25-421. Charges for tuition -- waivers.** The regents may:

1 (1) prescribe tuition rates, matriculation charges, and incidental fees for students in institutions
2 under their jurisdiction;

3 (2) waive nonresident tuition for selected and approved nonresident students, not to exceed at any
4 unit 2% of the full-time equivalent enrollment at that unit during the preceding year; except that when
5 necessary tuition may be waived in excess of 2% of unit enrollment for nonresident students who enroll
6 under provisions of any WICHE-sponsored state reciprocal agreements which provide for the payment,
7 where required, of the student support fee by the reciprocal state;

8 (3) waive resident tuition for students at least 62 years of age;

9 (4) waive tuition and fees for:

10 (a) ~~persons of one-fourth Indian blood or more who have been bona fide residents of Montana for~~
11 ~~at least 1 year prior to enrollment in the Montana university system;~~ PERSONS WHO HAVE BEEN BONA
12 FIDE RESIDENTS OF MONTANA FOR AT LEAST 1 YEAR PRIOR TO ENROLLMENT IN THE MONTANA
13 UNIVERSITY SYSTEM;

14 ~~(b)(B)~~ persons designated by the department of corrections pursuant to 52-5-112;

15 ~~(c)(C)~~ residents of Montana who served with the armed forces of the United States in any of
16 its wars and who were honorably discharged from military service;

17 ~~(d)(D)~~ children of residents of Montana who served with the armed forces of the United States
18 in any of its wars and who were killed in action or died as a result of injury, disease, or other disability
19 incurred while in the service of the armed forces of the United States; or

20 ~~(e)(E)~~ the spouses or children of residents of Montana who have been declared to be prisoners
21 of war or missing in action;

22 (5) waive tuition charges for qualified survivors of Montana firefighters or peace officers killed in
23 the course and scope of employment. For purposes of this subsection, a qualified survivor is a person who
24 meets the entrance requirements at the state university or college of the person's choice and is the
25 surviving spouse or child of any of the following who were killed in the course and scope of employment:

26 (a) a paid or volunteer member of a municipal or rural fire department;

27 (b) a law enforcement officer as defined in 7-32-201; or

28 (c) a full-time highway patrol officer."

29
30 **Section 4.** Section 49-2-303, MCA, is amended to read:

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

2 (a) an employer to refuse employment to a person, to bar a person from employment, or to
3 discriminate against a person in compensation or in a term, condition, or privilege of employment because
4 of race, creed, religion, color, or national origin or because of age, physical or mental disability, marital
5 status, or sex when the reasonable demands of the position do not require an age, physical or mental
6 disability, marital status, or sex distinction;

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

13 (c) an employer or employment agency to print or circulate or cause to be printed or circulated a
14 statement, advertisement, or publication or to use an employment application that expresses, directly or
15 indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental
16 disability, race, creed, religion, color, or national origin or an intent to make the limitation, unless based
17 upon a bona fide occupational qualification;

18 (d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to
19 discriminate against any individual because of sex, marital status, age, physical or mental disability, race,
20 creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

21 (2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications must
22 be strictly construed.

23 (3) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not
24 be construed as a violation of this section.

25 ~~(4) The application of a hiring preference as provided for in 2-18-111 and 18-1-110 may not be~~
26 ~~construed to be a violation of this section.~~

27 ~~(5)~~ It is not a violation of the prohibition against marital status discrimination in this section for an
28 employer or labor organization to provide greater or additional contributions to a bona fide group insurance
29 plan for employees with dependents than to those employees without dependents or with fewer
30 dependents."

1 **Section 5.** Section 49-2-403, MCA, is amended to read:

2 **"49-2-403. Specific limits on justification.** (1) Except as permitted in 49-2-303(3) through (5) and
3 49-3-201(5), sex, marital status, age, physical or mental disability, race, creed, religion, color, or national
4 origin may not comprise justification for discrimination ~~except for the legally demonstrable purpose of~~
5 ~~correcting a previous discriminatory practice.~~

6 (2) Age or mental disability may represent a legitimate discriminatory criterion in credit transactions
7 only as it relates to a person's capacity to make or be bound by contracts or other obligations."
8

9 **Section 6.** Section 49-3-103, MCA, is amended to read:

10 **"49-3-103. Permitted distinctions.** (1) ~~Nothing in this~~ This chapter prohibits any does not prohibit
11 a public employer:

12 (a) from enforcing a differentiation based on marital status, age, or physical or mental disability
13 when based on a bona fide occupational qualification reasonably necessary to the normal operation of the
14 particular business or ~~where~~ when the differentiation is based on reasonable factors other than age;

15 (b) from observing the terms of a bona fide seniority system or any bona fide employee benefit
16 plan, such as a retirement, pension, or insurance plan, that is not a subterfuge to evade the purposes of
17 this chapter, except that an employee benefit plan may not excuse the failure to hire any individual;

18 (c) from discharging or otherwise disciplining an individual for good cause; or

19 (d) from providing greater or additional contributions to a bona fide group insurance plan for
20 employees with dependents than to those employees without dependents or with fewer dependents.

21 (2) The application of an employment preference as provided for in ~~2-18-111, 10-2-402, 18-1-110,~~
22 and Title 39, chapter 29 or 30, by a public employer, as defined in 39-29-101 and 39-30-103, may not be
23 construed to constitute a violation of this chapter."
24

25 **Section 7.** Section 49-3-201, MCA, is amended to read:

26 **"49-3-201. Employment of state and local government personnel.** (1) State and local government
27 officials and supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on
28 the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex; age,
29 marital status, physical or mental disability, or national origin.

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

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

3 (b) regularly review their personnel practices to ~~assure~~ ensure compliance; and

4 (c) conduct continuing orientation and training programs with emphasis on human relations and
5 fair employment practices.

6 (3) The department of administration shall ensure that the entire examination process, including
7 appraisal of qualifications, is free from bias.

8 (4) ~~Appointing authorities shall exercise care to ensure utilization of minority group persons.~~

9 ~~(5)~~ Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not
10 be construed as a violation of this section."

11
12 ~~Section 8. Section 81-2-120, MCA, is amended to read:~~

13 ~~"81-2-120. Management of wild buffalo or bison for disease control. (1) Whenever a publicly~~
14 ~~owned wild buffalo or bison from a herd that is infected with a dangerous disease enters the state of~~
15 ~~Montana on public or private land and the disease may spread to persons or livestock or whenever the~~
16 ~~presence of wild buffalo or bison may jeopardize Montana's compliance with federally administered~~
17 ~~livestock disease control programs, the department may, under a plan approved by the governor, use any~~
18 ~~feasible method in taking one or more of the following actions:~~

19 (a) ~~The live wild buffalo or bison may be physically removed by the safest and most expeditious~~
20 ~~means from within the state boundaries, including but not limited to hazing and aversion tactics or capture,~~
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28 ~~means, including but not limited to burying, incineration, rendering, or field dressing for donation or delivery~~
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30 (3) ~~In disposing of the carcass, the department:~~

