

SENATE BILL NO. 447

INTRODUCED BY GRIMES, NOENNIG

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATED TO EMPLOYMENT
5 REFERENCES, BLACKLISTING, AND DEFAMATION; CLARIFYING THAT CONSENT TO PUBLICATION
6 CONSTITUTES A PRIVILEGE UNDER DEFAMATION LAW; PROVIDING THAT EMPLOYMENT
7 REFERENCES ARE SUBJECT TO DEFAMATION LAW; ELIMINATING LIMITS ON LIABILITY FOR
8 EMPLOYMENT REFERENCES; AMENDING SECTIONS 27-1-804, 39-2-801, 39-2-802, AND 39-2-803, MCA
9 ELIMINATING THE TEST FOR LIABILITY FOR DISCLOSURE OF INFORMATION ABOUT AN EMPLOYEE'S
10 OR FORMER EMPLOYEE'S PERFORMANCE; REPEALING SECTION 27-1-737, MCA; AND PROVIDING AN
11 IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

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15 ~~Section 1.~~ Section 27-1-804, MCA, is amended to read:

16 ~~"27-1-804. What communications are privileged --applicability to employment references. (1) A~~
17 ~~privileged publication is one that is made:~~

18 ~~(1)(a) in the proper discharge of an official duty;~~

19 ~~(2)(b) in any legislative or judicial proceeding or in any other official proceeding authorized by law;~~

20 ~~(c) with the consent of the person alleged to have been defamed if that person knows the exact~~
21 ~~language of the publication or has reason to know that it may be defamatory. Consent is not effective if it is~~
22 ~~obtained by fraud or duress or is given by one who lacks the capacity to consent.~~

23 ~~(3)(d) in a communication without malice to a person interested therein in the communication by one~~
24 ~~a person who is also interested in the communication or by one who stands in such a relation to the person~~
25 ~~interested as to afford that affords a reasonable ground for supposing believing the motive for the~~
26 ~~communication innocent or who is requested by the person interested to give the information;~~

27 ~~(4)(e) by a fair and true report without malice of a judicial, legislative, or other public official proceeding~~
28 ~~or of anything said in the course thereof of the proceeding.~~

29 ~~(2) A publication regarding a person's job performance or suitability for employment that is made to an~~
30 ~~employer or prospective employer is a privileged publication if it is made in accordance with a provision of~~

1 subsection (1)."

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3 ~~Section 2. Section 39-2-801, MCA, is amended to read:~~

4 ~~"39-2-801. Employee to be furnished on demand with reason for discharge. (1) It is the duty of any~~
 5 ~~person after having discharged any An employer who discharges an employee from service shall, upon written~~
 6 ~~demand by the discharged employee made within 30 days of the discharge, to furnish the discharged employee~~
 7 ~~in writing with a written statement of reasons for the discharge within 30 days of receipt of the written demand.~~
 8 ~~Except as provided in subsection (3), if the person refuses to do so within a reasonable time after the demand,~~
 9 ~~it is unlawful for the person to furnish any statement of the reasons for the discharge to any person or in any way~~
 10 ~~to blacklist or to prevent the discharged person from procuring employment elsewhere, subject to the penalties~~
 11 ~~and damages prescribed in this part An employer who fails to furnish the statement as provided in this~~
 12 ~~subsection loses any privilege that might otherwise apply under 27-1-804(1)(d) to a subsequent publication~~
 13 ~~regarding a person's job performance or suitability for employment.~~

14 ~~(2) A written demand under this part subsection (1) must advise the person employer who discharged~~
 15 ~~the employee of the possibility that the statements statement may be used in litigation and of the consequences~~
 16 ~~of failing to provide the statement.~~

17 ~~(3) A response by the employer to the employee's demand of a statement under subsection (1) may~~
 18 ~~be modified at any time and may not limit a person's an employer's ability to present a full defense in any action~~
 19 ~~brought by the discharged employee. Failure Except for the loss of the privilege as provided in subsection (1),~~
 20 ~~failure of an employer to provide a response as required under subsection (1) may not limit a person's an~~
 21 ~~employer's ability to present a full defense in any action brought by the discharged employee."~~

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23 ~~Section 3. Section 39-2-802, MCA, is amended to read:~~

24 ~~"39-2-802. Protection of discharged employees. If any Except as provided in 27-1-804(2), if a person,~~
 25 ~~after having discharged an employee from his the person's service, prevents or attempts to prevent by word or~~
 26 ~~writing of any kind such the discharged employee from obtaining employment with any other person, such the~~
 27 ~~person is punishable as provided in 39-2-804 and is liable in punitive damages to such the discharged person,~~
 28 ~~to be recovered by civil action. No person is prohibited Section 39-2-803 and this section do not prohibit a~~
 29 ~~person, company, corporation, or agent of the person, company, or corporation from informing giving, by word~~
 30 ~~or writing, a truthful statement of the reasons for the discharge to any person to whom such a discharged person~~

1 or employee has applied for employment a truthful statement of the reason for such discharge."

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3 ~~Section 4.~~ Section 39-2-803, MCA, is amended to read:

4 ~~"39-2-803. Blacklisting prohibited.~~ If any ~~Except as provided in 27-1-804(2) and 39-2-802,~~ if a
5 company or corporation in this state authorizes or allows any of its agents to blacklist a discharged employee
6 ~~or any if a company, corporation, or person does blacklist any a discharged employee or attempts by word or~~
7 ~~writing or any other means whatever to prevent any a discharged employee or any employee who may have~~
8 ~~voluntarily left the company's or corporation's service from obtaining employment with another person, except~~
9 ~~as provided for in 39-2-802, such the company or corporation, or person is liable in for punitive damages to such~~
10 ~~the employee so prevented from obtaining employment, to be recovered by him the employee in a civil action,~~
11 ~~and is also punishable as provided in 39-2-804."~~

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13 NEW SECTION. **Section 1. Repealer.** Section 27-1-737, MCA, is repealed.

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15 NEW SECTION. **Section 2. Saving clause.** [This act] does not affect rights and duties that matured,
16 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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18 NEW SECTION. **Section 3. Effective date -- applicability.** [This act] is effective on passage and
19 approval and applies to causes of action arising on or after [the effective date of this act].

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