

HOUSE BILL NO. 652

INTRODUCED BY D. MCALPIN

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING COMMUNITY BENEFITS AGREEMENTS FOR LARGE RETAILERS; PROVIDING DEFINITIONS; PROVIDING DEFAULT PROVISIONS IF AGREEMENTS ARE NOT NEGOTIATED AND APPROVED BY THE ELECTORS; PROVIDING FOR ENFORCEMENT OF COMMUNITY BENEFITS AGREEMENTS; PROVIDING REMEDIES AND PENALTIES FOR VIOLATIONS OF COMMUNITY BENEFITS AGREEMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 10], the following definitions apply:

(1) (a) "Benefits" means payments made by a large retail employer for any bona fide fringe benefits paid directly to an employee or to a third party on behalf of an employee or dependents of an employee. The term includes benefits related to health care, retirement security, disability, training and education, or paid leave.

(b) The term does not include:

(i) payments that are tips or gratuities deducted from an employee's wages or otherwise reimbursed by an employee or required by any other local, state, or federal law;

(ii) the value of any benefit for which an employee is eligible but for which a payment is not actually made to the employee or to any other party on the employee's behalf because the employee either does not actually use or does not elect to receive the benefit for any reason.

(2) "Community benefits agreement" means an agreement by a large retailer negotiated with a county as provided in [section 2].

(3) "Department" means the department of labor and industry provided for in 2-15-1701.

(4) "Employee" means any person who in a particular week performs at least 5 hours of work on the premises of a large retailer for any large retail employer. The term includes persons performing work on a full-time, part-time, temporary, or seasonal basis and includes independent contractors, contracted workers, contingent workers, and persons made available to work through the services of a temporary services, staffing, or employment agency or a similar entity.

(5) "Large retail employer" means any large retailer or subcontractor.

(6) (a) "Large retailer" means any company that operates a retail store located within the geographic boundaries of Montana if:

(i) the company's gross revenue totals \$2 billion or more on an annual basis; and

(ii) the indoor area of the retail store consists of at least 75,000 square feet or more. For the purposes of this subsection (6)(a)(ii), the indoor areas of adjacent stores must be aggregated if the stores share management, a controlling ownership interest, a warehouse, or a distribution facility.

(b) The term does not include a company operating a retail store for:

(i) the sale or rental of motor vehicles, except for parts and accessories, and the sale of materials used in motor vehicles, except for parts and accessories; or

(ii) the sale of materials used in the construction of buildings or other structures, except for fixtures and hardware.

(7) "Premises of a large retailer" means all retail store buildings occupied by a large retailer and associated indoor or outdoor areas, including but not limited to parking lots, sidewalks, pedestrian areas, and employee break areas.

(8) "Subcontractor" means any business that performs services, including but not limited to janitorial or security services, on the premises of a large retailer or that holds a sublease or contract authorizing that party to occupy, use, control, or do business on the premises of a large retailer.

NEW SECTION. Section 2. Community benefits agreement required -- alternative agreement. (1)

Before any large retailer may open a store in a county, the large retailer must either implement the default state community benefits package, specified in [sections 3 through 9], or negotiate an alternative community benefits agreement with the county government and have that agreement approved by the voters of that county.

(2) If a large retailer negotiates for an alternative community benefits agreement, the board of county commissioners shall include a broad cross-section of the county in the negotiations, including representatives of small business, environmental interests, labor, and social services and other community representatives. The board of county commissioners shall hold a hearing or hearings on the proposed alternative community benefits agreement.

(3) As part of the process described in subsection (2), the large retailer shall prepare a local economic impact statement and an environmental impact statement. A county may prepare an independent local economic

1 impact statement and the large retailer shall compensate the county for the cost of the independent local
2 economic impact statement.

3 (4) The hearing or hearings on a community benefits agreement must provide for a discussion of
4 provisions addressing prevailing wages, employee benefits, free speech access to public areas, use of public
5 subsidies by company employees, local purchasing, environmental impacts, and implementation and enforcement
6 rules, as described in [sections 3 through 9], and other issues raised by community members. A hearing must
7 be held in compliance with Article II, sections 8 and 9, of the Montana constitution.

8 (5) If the board of county commissioners approves an alternative community benefits agreement, the
9 alternative community benefits agreement must be submitted to a vote of county electors at the next election and
10 a copy of the alternative community benefits agreement must be mailed to each elector a month before the
11 election.

12 (6) If the county electors reject the alternative community benefits agreement, the large retailer shall
13 implement the default state community benefits package, as provided in [sections 3 through 9], in order to
14 proceed with opening the proposed store.

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16 **NEW SECTION. Section 3. Default prevailing wage.** If an alternative community benefits agreement
17 is not negotiated with a county, as provided in [section 2], a large retail employer shall adopt the following default
18 prevailing wage rate for the store:

19 (1) All large retail employers shall provide employees an hourly wage no less than the prevailing wage
20 rate.

21 (2) Beginning on [the effective date of this act], the prevailing wage rate must be an hourly rate of \$10,
22 a wage that will enable a full-time worker to earn an income that will provide a family of four with approximately
23 110% of the federal poverty guidelines. The prevailing wage rate must be increased on January 1, 2008, and on
24 January 1 of each succeeding year by the increase in the cost of living.

25 (3) The increase in the cost of living must be measured by the percentage increase as of August of the
26 immediately preceding year over the level as of August of the previous year of the consumer price index, U.S.
27 city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics
28 of the United States department of labor, or its successor index as published by the U.S. department of labor or
29 its successor agency. The amount of the increase in both the prevailing wage rate and the benefits rate must be
30 rounded to the nearest multiple of 5 cents. The agency shall publish notice by November 1 of each year of the

adjusted prevailing wage rate, which must take effect the following January 1.

NEW SECTION. Section 4. Default employee benefits rate -- compensation package. If a community benefits agreement is not negotiated with a county, as provided in [section 2], the large retail employer shall adopt the following default benefits rate for the store:

(1) Beginning on [the effective date of this act], the benefits rate must be \$3 an hour. The benefits rate must be increased on January 1, 2008, and on January 1 of each succeeding year by the increase in the cost of living, calculated as provided in [section 3(3)].

(2) A large retail employer shall provide employees with an hourly compensation package with a total value of at least than the sum of the prevailing wage rate, calculated pursuant to [section 3], and the benefits rate, calculated pursuant to subsection (1), for each hour that the employee works on the premises of a large retailer. A large retail employer may use any reasonable methodology, consistent with any rules adopted by the department, for determining the value of any benefits paid and may use each quarter, month, or pay period as the relevant period for calculating the prorated hourly value of any benefits paid for by the employer on behalf of the employee and the employee's dependents.

NEW SECTION. Section 5. Use of public subsidies -- report. If a community benefits agreement is not negotiated with a county, as provided in [section 2], the large retail employer shall conduct a yearly survey of its employees in each county to establish what if any public subsidies they are receiving. The large retailer shall submit an annual report based on those results to the department and each county in which a store is located.

NEW SECTION. Section 6. Disclosure of local purchasing. If a community benefits agreement is not negotiated with a county, as provided in [section 2], the large retailer shall track what percentage of the value of goods sold in each Montana store was purchased from state farms and manufacturers, with the value of each category calculated separately. The large retailer shall submit an annual report based on those results to the department and each county in which a store is located.

NEW SECTION. Section 7. Environmental impacts. If a community benefits agreement is not negotiated with a county, as provided in [section 2], the large retailer shall comply with the following:

(1) In addition to conducting an environmental review before initial construction of the store, the large retailer shall partner with local community and environmental leaders to avoid environmental damage and other disruptions caused by the site selection, construction, and ongoing operation of the large retailer's store or facility, including significantly reducing and mitigating adverse impacts on:

- (a) wildlife;
- (b) local services and facilities;
- (c) traffic;
- (d) air quality;
- (e) streams, rivers, and wetlands;
- (f) public health and safety; and

(g) the economic health of downtown business centers within a 35-mile radius of the store or facility.

(2) The large retailer shall also strictly enforce this policy with all of its suppliers within the state.

(3) The large retailer shall submit an annual report detailing compliance with subsections (1) and (2) to the department and the county in which a store or facility is located.

NEW SECTION. Section 8. Public access for free speech -- definition. If a community benefits agreement is not negotiated with a county, as provided in [section 2], the large retailer shall comply with the following:

(1) Any member of the public shall be provided with access to the public areas of the store or facility of a large retailer to engage in noncommercial speech with customers and employees on matters relating to community affairs, religion, politics, business practices, workplace rights, or topics of public concern. The speech may include distributing literature relating to identified matters and soliciting signatures on forms or petitions addressed to public officials, government agencies, religious organizations, business entities, or other community institutions.

(2) (a) Speech authorized in subsection (1) must be conducted in an orderly manner and may be subject to any of the following time, place, and manner restrictions that the large retailer chooses to establish:

(i) a restriction on the use of bright lights, loudspeakers, musical instruments, radios, televisions, amplifiers, and similar devices; and

(ii) a restriction on littering, including a reasonable charge, not to exceed \$100, for cleanup costs resulting from the distribution of literature.

(b) Restrictions established pursuant to subsection (2)(a) may not discriminate based on the subject matter or content of the speech.

(3) Law enforcement officers may not remove any person or group engaging in any speech activity in public areas from the premises of a large retailer for trespass. However, law enforcement officers may enforce any injunction issued by a court prohibiting an individual or group from entering the premises of a large retailer for violating time, place, and manner restrictions established by the management pursuant to this section. Law enforcement officers may enforce any violations of the law, other than trespass, by any individual or group.

(4) As used in this section, "public areas" means parking lots, sidewalks, pedestrian areas, outdoor employee break areas, and other similar outdoor areas.

NEW SECTION. Section 9. Implementation and enforcement provisions. If a community benefits agreement is not negotiated with a county, as provided in [section 2], the large retailer shall comply with the following:

(1) The department shall interpret, implement, and enforce [sections 1 through 10], including adopting rules and issuing administrative findings of violations and instituting legal actions to enforce administrative findings. The department shall establish appropriate civil penalties payable to the state for violations of the requirements and standards prescribed by [sections 1 through 10] or any administrative rules. Civil penalties may be retained by the department and used to finance activities to enforce [sections 1 through 10].

(2) By December 1 of each year, the department shall publish and make available to large retail employers:

(a) a bulletin announcing the adjusted prevailing wage rate and benefits rate for the upcoming year; and

(b) a notice informing employees of the current prevailing wage rate and benefits rate and of their rights under [sections 1 through 10], which all large retail employers shall post in a conspicuous place at any workplace or job site where an employee works.

(3) Large retail employers shall allow the department access to payroll and benefits records to monitor compliance with the requirements of [sections 1 through 10]. Large retail employers shall permit an employee or an employee's designated representative to inspect the large retail employer's payroll and benefits pertaining to that employee. If a large retail employer does not maintain or retain adequate records documenting wages or benefits paid or does not allow the department reasonable access to the records, there is a rebuttable presumption that the large retail employer has not paid the required hourly compensation package. This

1 presumption may be overcome if the large retail employer proves by clear and convincing evidence that the large
2 retail employer has paid the required hourly compensation package.

3 (4) For the purpose of enforcing [sections 1 through 10], the department and other state agencies and
4 local law enforcement officers may enter and inspect the records and place of business or employment of any
5 large retail employer and may interview employees away from the place of business or employment of any large
6 retail employer. A large retail employer or other person may not hinder an investigation under this section.

7 (5) A large retail employer or other person may not discharge or take any other adverse action against
8 any person in retaliation for asserting any claim or right under [sections 1 through 10], for assisting any other
9 person in asserting any claim or right under [sections 1 through 10], or for informing any person about their rights.
10 Taking adverse action against a person within 90 days of a person's engaging in the foregoing activities raises
11 a presumption that the action was retaliation, which may be rebutted by clear and convincing evidence that the
12 action was taken for other permissible reasons.

13 (6) Any person or organization may file an administrative complaint with the department charging that
14 a large retail employer has violated [sections 1 through 10] as to any employee or other person. The department
15 shall promptly investigate administrative complaints and may interview and review records regarding any or all
16 employees at the large retail employer's store or facility in order to determine whether a pattern of violations has
17 occurred and to protect the identity of any employee identified in the complaint. Where prompt compliance is not
18 forthcoming, the department may take any appropriate enforcement action to secure compliance, including
19 initiating a civil action or requesting other state agencies to revoke or suspend any registration certificates,
20 permits, or licenses held or requested by the large retail employer or person until the time that the violation is
21 remedied.

22 (7) An action for equitable and monetary relief may be brought against a large retail employer by an
23 employee or person acting on behalf of an employee or on behalf of all similarly situated employees in any court
24 of competent jurisdiction for any violation of [sections 1 through 10] or any rule implementing [sections 1 through
25 10]. The action may be commenced no later than 3 years after the violation, no later than 3 years from when the
26 violation ceased if it was of a continuing nature, or within 1 year after final disposition by the department of a
27 complaint for the same violation, whichever is later. An action may encompass all violations that occurred as part
28 of a continuing course of employer conduct regardless of the date of violation. Any investigation of a large retail
29 employer by the department or a law enforcement officer or agency may not bar a person from bringing an action
30 under this subsection, and there is no exhaustion requirement, no procedural, pleading, or burden of proof

requirements beyond those that apply generally to civil suits in order to maintain such action, and no liability for costs or attorney fees on an employee.

(8) A large retail employer who fails to pay the total hourly compensation required under [sections 1 through 10] is liable to the employee for the balance of the compensation owed, including interest on the compensation owed, and an additional amount equal to twice the underpaid compensation. A large retail employer who retaliates against an employee or other person in violation of [sections 1 through 10] shall pay the employee an amount set by the department or a court sufficient to compensate the employee and deter future violations, but not less than \$150 for each day that the violation continued or until legal judgment is final. The department and the courts may order payment of unpaid compensation, other amounts, and civil penalties and may order any other appropriate legal or equitable relief for violations of [sections 1 through 10]. A prevailing plaintiff is entitled to reasonable attorney fees and costs.

(9) The state and any agency of the state may consider violations of [sections 1 through 10] in determining whether employers may receive or renew public contracts, financial assistance, or licenses.

(10) The department shall make information regarding all large retail employers' compliance with [sections 1 through 10] publicly available. This information must be updated every 6 months for the first 2 years of a large retail employer's operation in the state and every succeeding year.

NEW SECTION. Section 10. Construction -- collective bargaining exception. (1) [Sections 1 through 10] must be liberally construed in favor of its purposes. [Sections 1 through 10] may not be construed to preempt or otherwise limit the applicability of any law that provides for payment of higher or supplemental wages or benefits.

(2) The provisions of [sections 1 through 10] may not be waived, except that the wages and benefits for employees covered by a bona fide collective bargaining agreement in force on [the effective date of this act] may be the wages and benefits provided for in that collective bargaining agreement during the remaining term of that agreement.

NEW SECTION. Section 11. Codification instruction. [Sections 1 through 10] are intended to be codified as an integral part of Title 39, chapter 2, and the provisions of Title 39, chapter 2, apply to [sections 1 through 10].

NEW SECTION. **Section 12. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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

NEW SECTION. **Section 14. Effective date.** [This act] is effective on passage and approval.

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