



AN ACT PROVIDING CERTAIN LEGAL PROTECTIONS FOR PRIVATE EMPLOYERS, EDUCATIONAL PROGRAMS OR INSTITUTIONS, AND PRIVATE LANDLORDS REGARDING EMPLOYMENT OF, ENROLLMENT OF, OR RENTAL TO INDIVIDUALS WHO HAVE CRIMINAL BACKGROUNDS; PROVIDING FOR A REHABILITATION CERTIFICATE AS A PRESUMPTION OF REHABILITATION; AMENDING SECTION 37-1-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

WHEREAS, research conducted in the last 60 years has shown that offenders who find gainful employment, enter career fields, and complete vocational and postsecondary education programs have less than a 4% recidivism rate; and

WHEREAS, reducing the recidivism rate among ex-offenders increases community safety and productivity and reduces incarceration rates and the impact of incarceration rates on future generations; and

WHEREAS, the United States Equal Employment Opportunity Commission has determined that an employer's use of an individual's criminal history in making employment decisions may violate the prohibition against employment discrimination under Title VII of the Civil Rights Act of 1964, as amended; and

WHEREAS, based on longstanding court decisions, national data, and existing federal guidance, the United States Equal Employment Opportunity Commission has determined that criminal record exclusions in employment, education, and housing have disparate impacts based on race and national origin; and

WHEREAS, the United States Equal Employment Opportunity Commission and the United States Department of Labor have placed a high priority on ensuring adherence to their guidance and regulations to avoid discrimination of a protected class when hiring or employing an individual with a criminal record; and

WHEREAS, an employer may be found liable for negligent hiring or negligent employment of a person with a criminal history who is involved in a subsequent incident or act, regardless of whether the subsequent act or behavior was within the scope of employment; and

WHEREAS, it is important for employers and other entities, including educational institutions and landlords, to have a mechanism to avoid potential liability for negligence as they try to balance concerns about

violating an individual's civil rights with concerns about hiring, enrolling, or renting to someone with a criminal record.

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

Section 1. Safe harbor in relation to employing individuals with criminal records. A private employer who complies in good faith with this section may not be held liable regarding claims of negligent hiring or negligent employment for acts committed by an employee with a criminal record if the acts are committed outside the scope of the employment and:

(1) the employer:

(a) reviewed an arrest record prior to hiring that did not show a disposition of the case or that indicated an acquittal or a dismissal;

(b) requested information regarding an applicant's criminal record but received false or incomplete information; or

(c) received from the applicant or employee a valid certificate of completion issued by a correctional institution or an entity recognized by the department of corrections for rehabilitative treatment or a rehabilitative course;

(2) the conviction was for:

(a) a misdemeanor offense; or

(b) an offense that was not related to the employment; or

(3) the employee with a criminal record has a valid rehabilitation certificate as provided in [section 2].

Section 2. Rehabilitation certificate -- conditions -- presumption. (1) Subject to subsection (2), after an individual with a criminal record files a petition with the sentencing court or the district court for the judicial district in which the individual with a criminal record resides, the court shall issue the individual a rehabilitation certificate if the individual:

(a) has received a conditional discharge under 46-23-1020 issued by the department of corrections, granted by the court in the jurisdiction where the individual resides, or granted by the sentencing court or has completed 3 years of parole or probation or a combination of parole and probation; and

(b) provides evidence of meeting two or more of the achievements listed in 46-23-1027 while in a community corrections program, serving a sentence on parole, or serving a sentence on probation or after 3 years in the community following discharge of a sentence.

(2) To be eligible for a rehabilitation certificate, an individual with a criminal record:

(a) may not have been convicted while under conditional discharge, parole, or probation of a misdemeanor or felony offense that may have resulted in a term of incarceration exceeding 6 months, excluding traffic violations within 3 years of the filing of the petition; and

(b) must have held gainful employment for at least 20 hours a week for a period equaling 3 years. Periods of involuntary unemployment may not count against the individual.

(3) The rehabilitation certificate creates a presumption of rehabilitation and successful reentry into the community. The presumption is to be a bar against use of the individual's criminal record against the individual in:

(a) applications for attendance at a postsecondary educational institution or vocational training program or school; or

(b) applications for employment, housing, or professional and occupational licensure.

(4) (a) The presumption provided for in subsection (3) may be overcome based on substantial evidence that after receiving the rehabilitation certificate the individual is not rehabilitated or the board of pardons and parole either returned the individual to a regular parolee status after revocation of a conditional discharge issued under 46-23-1020 or revoked the parole.

(b) The presumption does not overcome federal or state limitations for which criminal background checks are required by law.

(5) The rehabilitation certificate is automatically revoked if the individual with the rehabilitation certificate is convicted of a felony or of a misdemeanor offense described in 46-23-1020(2)(b).

Section 3. Safe harbor in relation to accepting students with criminal records. An educational program or educational institution that complies in good faith with this section may not be held liable for acts committed by a student with a criminal record who is accepted into and enrolled in the program or institution if:

(1) the arrest record reviewed by the educational program or educational institution prior to accepting the student with a criminal record did not show a disposition of the case or indicated an acquittal or a dismissal;

- (2) the student was convicted for a misdemeanor offense;
- (3) the student provides a valid certificate of completion issued by a correctional institution or an entity recognized by the department of corrections for rehabilitative treatment or a rehabilitative course; or
- (4) the student has a valid rehabilitation certificate as provided in [section 2].

Section 4. Safe harbor for private landlords renting or leasing to individual with criminal record.

A private landlord who complies in good faith with this section may not be held liable for acts committed by a tenant with a criminal record if:

- (1) the tenant provides a valid certificate of completion issued by a correctional institution or an entity recognized by the department of corrections for rehabilitative treatment or a rehabilitative course;
- (2) the tenant provided to the landlord a valid rehabilitation certificate as provided in [section 2]; or
- (3) the tenant provided false information on the application concerning the tenant's criminal history.

Section 5. Section 37-1-203, MCA, is amended to read:

"37-1-203. Conviction not a sole basis for denial. (1) Criminal convictions ~~shall do~~ not operate as an automatic bar to being licensed to enter any occupation in the state of Montana. ~~No~~ A licensing authority ~~shall~~ may not refuse to license a person solely on the basis of a previous criminal conviction, ~~provided, however,~~ ~~where~~ However, if a license applicant has been convicted of a criminal offense and ~~such that~~ such that criminal offense relates to the public health, welfare, and safety ~~as it applies in relation~~ to the occupation for which the license is sought, the licensing agency may, after investigation, find that the applicant ~~so~~ who has been convicted has not been sufficiently rehabilitated as to warrant the public trust and deny the issuance of a license.

(2) A rehabilitation certificate provided for in [section 2] is presumptive evidence of rehabilitation."

Section 6. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title

- 39, chapter 2, and the provisions of Title 39, chapter 2, apply to [section 1].
- (2) [Section 2] is intended to be codified as an integral part of Title 46, chapter 23, part 10, and the provisions of Title 46, chapter 23, part 10, apply to [section 2].
- (3) [Section 3] is intended to be codified as an integral part of Title 20, chapter 25, and the provisions of Title 20, chapter 25, apply to [section 3].

(4) [Section 4] is intended to be codified as an integral part of Title 70, chapter 24, and the provisions of Title 70, chapter 24, apply to [section 4].

Section 7. Effective date. [This act] is effective on passage and approval.

Section 8. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to individuals with criminal records acquired on or after October 1, 2009, who petition for a rehabilitation certificate to the sentencing court or the district court for the judicial district in which the individual resides.

- END -

I hereby certify that the within bill,
SB 0138, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2015.

Speaker of the House

Signed this _____ day
of _____, 2015.

SENATE BILL NO. 138

INTRODUCED BY B. HOVEN

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