

SENATE BILL NO. 447
INTRODUCED BY D. GRIMES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATED TO EMPLOYMENT REFERENCES, BLACKLISTING, AND DEFAMATION; CLARIFYING THAT CONSENT TO PUBLICATION CONSTITUTES A PRIVILEGE UNDER DEFAMATION LAW; PROVIDING THAT EMPLOYMENT REFERENCES ARE SUBJECT TO DEFAMATION LAW; ELIMINATING LIMITS ON LIABILITY FOR EMPLOYMENT REFERENCES; AMENDING SECTIONS 27-1-804, 39-2-801, 39-2-802, AND 39-2-803, MCA; REPEALING SECTION 27-1-737, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

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

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

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

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

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

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

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

(2) A publication regarding a person's job performance or suitability for employment that is made to an employer or prospective employer is a privileged publication if it is made in accordance with a provision of subsection (1)."

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

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

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

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

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

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

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

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

NEW SECTION. Section 5. Repealer. Section 27-1-737, MCA, is repealed.

NEW SECTION. Section 6. 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 7. Effective date -- applicability. [This act] is effective on passage and approval and applies to causes of action arising on or after [the effective date of this act].

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