

## 1 SENATE BILL NO. 138

2 INTRODUCED BY B. HOVEN

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING CERTAIN LEGAL PROTECTIONS FOR PRIVATE  
5 EMPLOYERS, EDUCATIONAL PROGRAMS OR INSTITUTIONS, AND PRIVATE LANDLORDS REGARDING  
6 EMPLOYMENT OF, ENROLLMENT OF, OR RENTAL TO INDIVIDUALS WHO HAVE CRIMINAL  
7 BACKGROUNDS; PROVIDING FOR A REHABILITATION CERTIFICATE AS A PRESUMPTION OF  
8 REHABILITATION; AMENDING SECTION 37-1-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE  
9 DATE AND A RETROACTIVE APPLICABILITY DATE."  
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11 WHEREAS, research conducted in the last 60 years has shown that offenders who find gainful  
12 employment, enter career fields, and complete vocational and postsecondary education programs have less than  
13 a 4% recidivism rate; and

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

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

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

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

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

28 WHEREAS, it is important for employers and other entities, including educational institutions and  
29 landlords, to have a mechanism to avoid potential liability for negligence as they try to balance concerns about  
30 violating an individual's civil rights with concerns about hiring, enrolling, or renting to someone with a criminal

1 record.

2

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

4

5 **NEW SECTION. Section 1. Safe harbor in relation to employing individuals with criminal records.**

6 ~~An A PRIVATE~~ employer ~~WHO ACTS REASONABLY AND COMPLIES IN GOOD FAITH WITH THIS SECTION~~ may not be held  
7 liable regarding claims of negligent hiring or negligent employment for acts committed by an employee with a  
8 criminal record if the acts are committed outside the scope of the employment and:

9 (1) the employer;

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

12 (B) REQUESTED INFORMATION REGARDING AN APPLICANT'S CRIMINAL RECORD BUT RECEIVED FALSE OR  
13 INCOMPLETE INFORMATION; OR

14 (C) RECEIVED FROM THE APPLICANT OR EMPLOYEE A VALID CERTIFICATE OF COMPLETION ISSUED BY A  
15 CORRECTIONAL INSTITUTION OR AN ENTITY RECOGNIZED BY THE DEPARTMENT OF CORRECTIONS FOR REHABILITATIVE  
16 TREATMENT OR A REHABILITATIVE COURSE;

17 (2) the conviction was for:

18 (a) a misdemeanor offense; or

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

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

21

22 **NEW SECTION. Section 2. Rehabilitation certificate -- conditions -- presumption.** (1) Subject to

23 subsection (2), after an individual with a criminal record files a petition with the sentencing court or the district  
24 court for the judicial district in which the individual with a criminal record resides, the court shall issue the  
25 individual a rehabilitation certificate if the individual:

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

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

1 in the community following discharge of a sentence.

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

3 (a) may not have been convicted while under conditional discharge, parole, or probation of a  
4 misdemeanor OR FELONY offense other than THAT MAY HAVE RESULTED IN A TERM OF INCARCERATION EXCEEDING 6  
5 MONTHS, EXCLUDING traffic violations, excluding violations under 61-8-401 or 61-8-406 WITHIN 3 YEARS OF THE  
6 FILING OF THE PETITION; and

7 (b) must have held gainful employment for at least 20 hours a week for a period equaling 3 years.

8 Periods of involuntary unemployment may not count against the individual.

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

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

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

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

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

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

23  
24 **NEW SECTION. Section 3. Safe harbor in relation to accepting students with criminal records.**

25 An educational program or educational institution THAT ACTS REASONABLY AND COMPLIES IN GOOD FAITH WITH THIS  
26 SECTION may not be held liable for acts committed by a student with a criminal record who is accepted into and  
27 enrolled in the program or institution if:

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

30 (2) the student was convicted for a misdemeanor offense;

1 (3) the student provides a valid certificate of completion issued by a correctional institution or an entity  
2 recognized by the department of corrections for rehabilitative treatment or a rehabilitative course; or

3 (4) the student has a valid rehabilitation certificate as provided in [section 2].  
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5 **NEW SECTION. Section 4. Safe harbor for PRIVATE landlords renting or leasing to individual with**  
6 **criminal record.** A PRIVATE landlord ~~WHO ACTS REASONABLY AND COMPLIES IN GOOD FAITH WITH THIS SECTION~~ may  
7 not be held liable for acts committed by a tenant with a criminal record if: ~~the landlord reviewed the criminal history~~  
8 ~~of the tenant prior to renting to the tenant and:~~

9 ~~—— (1) the arrest record did not show a disposition of the case or indicated an acquittal or a dismissal;~~

10 ~~—— (2) the conviction was for a misdemeanor offense;~~

11 ~~(3)~~(1) the tenant provides a valid certificate of completion issued by a correctional institution or an entity  
12 recognized by the department of corrections for rehabilitative treatment or a rehabilitative course; ~~or~~

13 ~~(4)~~(2) the tenant provided to the landlord a valid rehabilitation certificate as provided in [section 2]; ~~OR~~

14 (3) ~~THE TENANT PROVIDED FALSE INFORMATION ON THE APPLICATION CONCERNING THE TENANT'S CRIMINAL~~  
15 ~~HISTORY.~~

16

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

18 **"37-1-203. Conviction not a sole basis for denial.** (1) Criminal convictions ~~shall do~~ not operate as an  
19 automatic bar to being licensed to enter any occupation in the state of Montana. ~~No~~ A licensing authority ~~shall~~  
20 ~~may not~~ refuse to license a person solely on the basis of a previous criminal conviction, ~~provided, however,~~  
21 ~~where~~ However, if a license applicant has been convicted of a criminal offense and ~~such that~~ criminal offense  
22 relates to the public health, welfare, and safety ~~as it applies in relation~~ to the occupation for which the license is  
23 sought, the licensing agency may, after investigation, find that the applicant ~~so~~ who has been convicted has not  
24 been sufficiently rehabilitated as to warrant the public trust and deny the issuance of a license.

25 (2) A rehabilitation certificate provided for in [section 2] is presumptive evidence of rehabilitation."  
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27 **NEW SECTION. Section 6. Codification instruction.** (1) [Section 1] is intended to be codified as an  
28 integral part of Title 39, chapter 2, and the provisions of Title 39, chapter 2, apply to [section 1].

29 (2) [Section 2] is intended to be codified as an integral part of Title 46, chapter 23, part 10, and the  
30 provisions of Title 46, chapter 23, part 10, apply to [section 2].

1           (3) [Section 3] is intended to be codified as an integral part of Title 20, chapter 4 25, and the provisions  
2 of Title 20, chapter 4 25, apply to [section 3].

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

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6           NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

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

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