

SENATE BILL NO. 326

INTRODUCED BY B. HOVEN

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING REVIEW CRITERIA IN HIRING CERTAIN APPLICANTS; RESTRICTING QUESTIONS OF CRIMINAL HISTORY UNLESS REQUIRED BY LAW; PROVIDING A NOTIFICATION REQUIREMENT AND ALLOWING INVESTIGATIONS; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 4], the following definitions apply:

(1) (a) "Criminal history" means a state or federal history of having been convicted of a crime, whether a misdemeanor or a felony, that bears on an applicant's fitness for employment.

(b) The term does not include a record of arrest not resulting in conviction.

(2) "Employment" means a job, whether temporary, seasonal, part-time, or full-time, on the payroll of a private employer or a public agency.

(3) "Hiring authority" means the agent responsible by law for the hiring of individuals.

(4) "Public agency" has the meaning provided in 2-6-1002 and includes the Montana university system.

NEW SECTION. **Section 2. Consideration of criminal history of employment applicant -- exception.** (1) A hiring authority may not inquire into or consider the criminal history of an applicant for employment until the hiring authority has made a conditional offer of employment to the applicant. An inquiry under this section includes asking a question on an initial employment application form about a criminal history in general, unless the exemption under subsection (2) applies.

(2) A hiring authority may include on an application a specific question about the applicant's criminal history only if required by law to investigate a criminal background prior to hiring.

NEW SECTION. **Section 3. Criteria for disqualification from employment.** (1) Unless a criminal background check of an applicant is required for a license or otherwise prior to hiring for employment, a hiring



- 1 authority may not disqualify an applicant solely or in part because of a prior conviction unless:
- 2 (a) the conviction is determined to be substantially related to the qualifications, functions, or duties of
- 3 the position; and
- 4 (b) the factors listed under subsection (2) have been considered.
- 5 (2) The following factors may be used to disqualify an applicant based on a criminal history:
- 6 (a) the level and seriousness of the crime;
- 7 (b) the date of the crime;
- 8 (c) the age of the applicant at the time of the conviction;
- 9 (d) the circumstances surrounding the commission of the crime, if known;
- 10 (e) the nexus between the criminal conduct and the duties of the position;
- 11 (f) the prison, jail, probation, parole, rehabilitation, and employment records of the applicant after the date
- 12 on which the crime was committed; and
- 13 (g) the subsequent commission of a crime by the applicant.
- 14 (3) A record of arrest not resulting in conviction may not be the basis for disqualification from
- 15 employment.

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17 **NEW SECTION. Section 4. Notification -- investigation.** (1) The department of labor and industry

18 shall give notice as part of its unemployment compensation billing process at least once a year that new hiring

19 is subject to the provisions of [sections 1 through 4].

20 (2) The department may investigate complaints received under [sections 1 through 4] and provide

21 instruction for applications, upon request, to address the provisions of [sections 1 through 4].

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23 **NEW SECTION. Section 5. Codification instruction.** [Sections 1 through 4] are intended to be codified

24 as an integral part of Title 39, chapter 2, and the provisions of Title 39, chapter 2, apply to [sections 1 through 4].

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26 **NEW SECTION. Section 6. Effective date -- applicability.** [This act] is effective July 1, 2017, and

27 applies to applications for employment made on or after July 1, 2017.

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