

HOUSE BILL NO. 655

INTRODUCED BY G. KIPP III

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A BILL FOR AN ACT ENTITLED: "AN ACT PROPOSING AFFIRMATIVE ACTION AND INCENTIVES TO PROVIDE PREFERENCES FOR HIRING AMERICAN INDIANS IN MONTANA; PROVIDING A CREDIT AGAINST TAXES FOR A PORTION OF WAGES PAID TO INDIANS HIRED BY PRIVATE EMPLOYERS UNDER AFFIRMATIVE ACTION; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 49-2-303, MCA; AND PROVIDING AN APPLICABILITY DATE."

WHEREAS, the U.S. Supreme Court decision in Morton v. Mancari et al., 417 U.S. 535, resulted in continued support for a hiring preference for American Indians under Title VII of the Civil Rights Act of 1964, specifically 42 U.S.C. 2000e-2(i), allowing preferential treatment for Indians living on or near a reservation; and

WHEREAS, Section 7(b) of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 5307(b), provides that contracts and grants for Indian organizations or for the benefit of Indians are to require to the greatest extent feasible a preference for training and employment of Indians and a preference for awarding contracts to Indian organizations or Indian-owned businesses; and

WHEREAS, in recognizing a unique legal relationship with tribal Indians, the federal government has provided under 26 U.S.C. 45A an Indian employment tax credit for employers who hire Indians meeting certain criteria.

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

NEW SECTION. Section 1. Affirmative action for American Indian employment. (1) A public agency as defined in 2-6-1002 shall adopt an affirmative action policy to hire American Indians. This section is intended to correct previous discriminatory practices within the context of 49-2-403.

(2) The policy is in addition to:

(a) hiring preferences provided for state employees under 2-18-111 or state contracts under 18-1-110;

and

(b) the point preferences provided for veterans under 39-29-102, in particular as the point preferences

applies to Indian veterans.



1 (3) (a) In developing the policy, a public agency may take into consideration the requirements that area
2 tribal governments use to determine tribal membership for use in definition of the term "Indian".

3 (b) For state agencies, the term "Indian" has the meaning provided in 2-18-111.
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5 **NEW SECTION. Section 2. Tax credit for American Indian employment.** There is a credit against
6 taxes otherwise imposed by this chapter for private employers that employ American Indians who meet the
7 requirements in [section 3(2)]. The credit must be computed and administered as provided in [section 3].
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9 **NEW SECTION. Section 3. Tax credit for American Indian employment -- qualifications --
10 calculation -- rulemaking.** (1) There is a credit against taxes imposed by chapter 30 or this chapter for private
11 employers that employ American Indians who meet the requirements of subsection (2).
12

12 (2) The following conditions must be met to qualify for the tax credit under this section:

13 (a) the employee for whom the tax credit is granted is an enrolled member of an Indian tribe recognized
14 by the state of Montana;

15 (b) substantially all of the services performed by the employee described under subsection (2)(a) are
16 performed in Montana;

17 (c) the wages paid to the employee described in subsection (2)(a) on which the tax credit is based
18 include wages paid plus any contribution paid by the employer for health insurance to the employee's health
19 insurance coverage;

20 (d) the employee is not a 5% owner as defined in 26 U.S.C. 416(i)(1)(B) or employed in an enterprise
21 involved in gaming as defined in 25 U.S.C. 2703; and

22 (e) the employee has worked 52 weeks, less vacation or sick leave, for the employer in the tax year for
23 which the credit is claimed.

24 (3) The tax credit is equal to the Indian employment credit an employer may claim under 26 U.S.C. 45A
25 or \$1,000, whichever is greater.

26 (4) The credit allowed under this section may not exceed the taxpayer's income tax liability. The unused
27 portion of a credit may be carried forward for 3 succeeding tax years.

28 (5) The department may adopt rules to implement [section 2] and this section.
29

30 **Section 4.** Section 49-2-303, MCA, is amended to read:

1 **"49-2-303. Discrimination in employment.** (1) It is an unlawful discriminatory practice for:

2 (a) an employer to refuse employment to a person, to bar a person from employment, or to discriminate
3 against a person in compensation or in a term, condition, or privilege of employment because of race, creed,
4 religion, color, or national origin or because of age, physical or mental disability, marital status, or sex when the
5 reasonable demands of the position do not require an age, physical or mental disability, marital status, or sex
6 distinction;

7 (b) a labor organization or joint labor management committee controlling apprenticeship to exclude or
8 expel any person from its membership or from an apprenticeship or training program or to discriminate in any way
9 against a member of or an applicant to the labor organization or an employer or employee because of race,
10 creed, religion, color, or national origin or because of age, physical or mental disability, marital status, or sex
11 when the reasonable demands of the program do not require an age, physical or mental disability, marital status,
12 or sex distinction;

13 (c) an employer or employment agency to print or circulate or cause to be printed or circulated a
14 statement, advertisement, or publication or to use an employment application that expresses, directly or indirectly,
15 a limitation, specification, or discrimination as to sex, marital status, age, physical or mental disability, race, creed,
16 religion, color, or national origin or an intent to make the limitation, unless based upon a bona fide occupational
17 qualification;

18 (d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to
19 discriminate against any individual because of sex, marital status, age, physical or mental disability, race, creed,
20 religion, color, or national origin, unless based upon a bona fide occupational qualification.

21 (2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications must be
22 strictly construed.

23 (3) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be
24 construed as a violation of this section.

25 (4) The application of a hiring preference, as provided for in 2-18-111 ~~and~~, 18-1-110, and [section 1],
26 may not be construed to be a violation of this section.

27 (5) It is not a violation of the prohibition against marital status discrimination in this section:

28 (a) for an employer or labor organization to provide greater or additional contributions to a bona fide
29 group insurance plan for employees with dependents than to those employees without dependents or with fewer
30 dependents; or

1 (b) for an employer to employ or offer to employ a person who is qualified for the position and to also
2 employ or offer to employ the person's spouse.

3 (6) The provisions of this chapter do not apply to a business or enterprise on or near an Indian
4 reservation with respect to any publicly announced employment practice of the business or enterprise required
5 by a contract or other agreement under which preferential treatment may be given to an individual based on the
6 individual's status as an Indian living on or near a reservation."

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8 **NEW SECTION. Section 5. Notification to tribal governments.** The secretary of state shall send a
9 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
10 Chippewa tribe.

11
12 **NEW SECTION. Section 6. Codification instruction.** (1) [Section 1] is intended to be codified as an
13 integral part of Title 39, and the provisions of Title 39 apply to [section 1].

14 (2) [Section 2] is intended to be codified as an integral part of Title 15, chapter 30, part 23, and the
15 provisions of Title 15, chapter 30, part 23, apply to [section 2].

16 (3) [Section 3] is intended to be codified as an integral part of Title 15, chapter 31, part 1, and the
17 provisions of Title 15, chapter 31, part 1, apply to [section 3].

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19 **NEW SECTION. Section 7. Applicability.** [This act] applies to tax years beginning on or after January
20 1, 2018.

21 - END -