

## 1 SENATE BILL NO. 168

2 INTRODUCED BY B. HOVEN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE INITIAL EMPLOYMENT APPLICATION TO  
5 RESTRICT USE OF CONVICTION OR CRIMINAL HISTORY UNLESS REQUIRED; PROVIDING EXCEPTIONS;  
6 PROVIDING FOR NOTIFICATION AND INVESTIGATION BY THE DEPARTMENT OF LABOR AND INDUSTRY;  
7 AND PROVIDING PENALTIES FOR VIOLATIONS."

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

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11 NEW SECTION. **Section 1. Initial employment application process -- exceptions.** (1) Except as  
12 provided in subsection (2), an initial employment application form, on paper or provided electronically, may not  
13 contain a box or question regarding the applicant's conviction history or criminal history.

14 (2) Under the following conditions, an employer may require disclosure of an applicant's criminal history  
15 or an applicant's response to a question about criminal history on an initial application form:

16 (a) when required by federal, state, or local law, rule, or regulation;

17 (b) for hiring by a law enforcement agency; or

18 (c) for hiring of an employee in the criminal justice system; or

19 (d) for hiring of a nonemployee volunteer.

20 (3) This section does not prohibit:

21 (a) an employer who has obtained a credit history or acquired information in the usual course of checking  
22 an applicant's references from considering an applicant's conviction history or criminal history when making a  
23 hiring decision; or

24 (b) a licensing board under Title 37 or other nonhiring authority required to obtain a criminal history  
25 record from requesting information related to a conviction history or a criminal history.

26 (4) For the purposes of this section, the following definitions apply:

27 (a) (i) "Conviction history" means a history of criminal convictions.

28 (ii) The term does not include an arrest, indictment, or detention under charges that did not result in a  
29 conviction or whose final result was an invalidated conviction, as provided in 44-5-202(8).

30 (b) "Criminal history" has the same meaning as "criminal history record information" in 44-5-103.

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2           **NEW SECTION. Section 2. Notification -- investigation -- penalties.** (1) The department shall provide  
3 notice of the provisions of [section 1] at least once a year as part of its unemployment compensation billing  
4 process. The notice must state that an employer taking an applicant's conviction history into consideration must  
5 also consider the applicant's restoration of rights under Article II, section 28, of the Montana constitution and  
6 consider any information provided by the applicant regarding the applicant's rehabilitation.

7           (2) The department may:

8           (a) provide instruction for applications, on request, to address the provisions of [section 1]; and

9           (b) investigate complaints received under [section 1] and impose penalties of \$500 for a first-time  
10 violation under [section 1]. A second violation and all subsequent violations are subject to a fine of \$1,000 for  
11 each violation. The fine must be deposited in a state special revenue account for transfer to the general fund on  
12 a semiannual basis, less 10% to pay for the costs of investigation.

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14           **NEW SECTION. Section 3. Codification instruction.** [Sections 1 and 2] are intended to be codified  
15 as an integral part of Title 39, chapter 2, and the provisions of Title 39, chapter 2, apply to [sections 1 and 2].

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