

1 SENATE BILL NO. 361
2 INTRODUCED BY B. HOVEN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CRIMINAL RECORD LAWS;
5 ESTABLISHING A CERTIFICATE OF REHABILITATION; PROVIDING PROCEDURES AND CONDITIONS
6 FOR ISSUANCE; CREATING A PRESUMPTION OF REHABILITATION; PROVIDING CERTAIN LEGAL
7 PROTECTIONS FOR LANDLORDS REGARDING RENTAL AND LEASING OF RESIDENTIAL PROPERTY
8 TO INDIVIDUALS WITH A CRIMINAL BACKGROUND; PROVIDING CERTAIN LEGAL PROTECTIONS FOR
9 PRIVATE EDUCATIONAL INSTITUTIONS AND PROGRAMS IN ADMITTING AND ENROLLING
10 INDIVIDUALS WITH CRIMINAL BACKGROUNDS; AMENDING SECTIONS 37-1-203 AND 39-2-710, MCA;
11 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

14
15 NEW SECTION. Section 1. Certificate of rehabilitation -- procedure for issuance. (1) An
16 individual with a FELONY criminal record, the individual's attorney, or a county attorney may file a petition
17 requesting that a certificate of rehabilitation be issued by a court to the individual with a FELONY criminal record.

18 (2) The petition ~~may~~ MUST be filed with the sentencing court ~~or the district court for the judicial district~~
19 ~~in which the petitioner resides. The petition must~~ AND be served on the county attorney in the county of the
20 ~~presiding district court~~ SENTENCING COURT'S JURISDICTION.

21 (3) The petition must set forth the reasons the petitioner meets the requirements of [section 2].

22 (4) The court ~~shall~~ may issue a certificate of rehabilitation to the petitioner if the court determines that
23 the petitioner has met the requirements of [section 2] AND THE PETITIONER HAS REMAINED A LAW-ABIDING CITIZEN.

24 (5) AN INDIVIDUAL MAY NOT REQUEST A CERTIFICATE OF REHABILITATION WHILE CHARGED WITH OR PENDING A
25 FELONY OFFENSE, A MISDEMEANOR OFFENSE WITH A POSSIBLE PENALTY OF UP TO 1 YEAR IN JAIL, OR A REVOCATION OF
26 A CONDITIONAL DISCHARGE UNDER 46-23-1020(2) OR REVOCATION OF PAROLE OF A SUSPENDED SENTENCE.

27 (5)(6) Upon issue of the certificate of rehabilitation, the court shall ~~also~~ issue an order including the
28 name of the individual receiving the certificate, that the individual has met the requirements for the certificate of

1 rehabilitation and is considered rehabilitated, and the date the certificate was issued.

2

3 NEW SECTION. Section 2. Certificate of rehabilitation -- conditions -- presumption. (1) After a
4 petition is filed pursuant to [section 1(1)], a court ~~shall~~may issue a certificate of rehabilitation to an individual if
5 the individual:

6 (a) (i) has received a conditional discharge under 46-23-1020; and

7 (ii) provides evidence of achieving ~~one~~two or more of the achievements listed in 46-23-1027(2)(a)
8 through (2)(f); or

9 (b) (i) has completed 18 months of probation or parole supervision, a combination of 18 months of
10 probation and parole supervision, one-half of a deferred sentence, or A MINIMUM OF 1 year in the community
11 following the discharge of a sentence; and

12 (ii) provides evidence of meeting ~~two~~one or more of the achievements listed in 46-23-1027(2)(a)
13 through (2)(f) while in the community; ~~and~~

14 ~~(c) within 1 year of the filing of the petition, has not been convicted while under conditional discharge~~
15 ~~or probation or parole supervision of a misdemeanor offense resulting in a term of incarceration exceeding 6~~
16 ~~months, excluding traffic violations, or of a felony offense.~~

17 (2) Except as provided in subsection (4), the certificate of rehabilitation creates a presumption of
18 rehabilitation and successful reentry into the community. The presumption is a bar against use of the
19 individual's criminal record against the individual in:

20 (a) applications for attendance at a postsecondary educational institution or vocational training
21 program that is required for participation or employment in an employment field; or

22 (b) mandated professional and occupational licensure or employment for which good moral character
23 is a qualification factor as determined by a licensing board or certification authority.

24 (3) If an individual with ~~the~~ A PROPERLY ISSUED certificate of rehabilitation is convicted of a felony or
25 misdemeanor offense ~~described in subsection (1)(c) , the county attorney in the jurisdiction where the~~
26 ~~conviction described in subsection (1)(c) occur red shall file a notice with the issuing court of the conviction. In~~
27 WITH A POSSIBLE PENALTY OF UP TO 1 YEAR IN JAIL, IN its sentencing order, the court shall state that the conviction
28 requires automatic revocation of a previously issued certificate of rehabilitation. ~~The court shall attach to the~~

1 ~~certificate of rehabilitation the order revoking the certificate based on the conviction.~~

2 (4) The presumption of rehabilitation described in subsection (2) does not overcome restrictions on
3 employment in law enforcement or when explicitly barred due to federal or state law.

4
5 **NEW SECTION. Section 3. Safe harbor for private landlords renting or leasing to individual**
6 **with a criminal record.** A private landlord who complies substantially and in good faith with this section may
7 not be held liable for acts committed by a tenant with a criminal record SOLELY ON ACCOUNT THAT THE TENANT HAS
8 A CRIMINAL RECORD if:

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

11 (2) prior to the act committed by the tenant, the tenant provides to the private landlord a valid
12 certificate of rehabilitation issued pursuant to [sections 1 and 2]; or

13 (3) the tenant provides false information about the tenant's criminal history on the rental application.
14

15 **NEW SECTION. Section 4. Safe harbor in relation to accepting student with criminal record.** A
16 private educational or vocational institution or program that complies substantially and in good faith with the
17 provisions of this section may not be held liable for acts committed by a student who is enrolled in a program or
18 institution solely on account that the student has a criminal record if:

19 (1) the criminal history reviewed by the institution or program prior to accepting the student did not
20 show a disposition of the case or indicated an acquittal or dismissal;

21 (2) the student was convicted of a misdemeanor offense;

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

24 (4) prior to the act, the student provided a valid certificate of rehabilitation issued pursuant to [sections
25 1 and 2].
26

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

28 **"37-1-203. Conviction not a sole basis for denial -- when presumption of rehabilitation created.**

1 (1) Criminal convictions shall not operate as an automatic bar to being licensed to enter any occupation in the
 2 state of Montana. ~~No~~ A licensing authority ~~shall~~ may not refuse to license a person solely on the basis of a
 3 previous criminal conviction; ~~provided, however, where~~ unless a license applicant has been convicted of a
 4 criminal offense and ~~such the~~ criminal offense ~~relates to the public health, welfare, and safety as it applies~~ has
 5 a direct relationship to the occupation for which the license is sought, ~~the~~. The licensing agency may, after
 6 investigation, find that the applicant ~~so convicted with the previous criminal conviction~~ has not been sufficiently
 7 rehabilitated as to warrant the public trust and deny the issuance of a license.

8 (2) A certificate of rehabilitation issued pursuant to [sections 1 and 2] creates a presumption of
 9 rehabilitation and good moral character ~~FOR THE PURPOSES OF VOCATIONAL AND PROFESSIONAL LICENSING.~~"

11 **Section 6.** Section 39-2-710, MCA, is amended to read:

12 **"39-2-710. Legal protections in relation to employing individuals with criminal records.** A

13 private employer who acts ~~reasonably and complies in good faith~~ and substantially complies with this section
 14 may not be held liable regarding claims of negligent hiring or negligent employment for acts committed by an
 15 employee with a criminal record if the acts are committed outside the scope of the employment and:

16 (1) the employer reviewed an arrest record prior to hiring that did not show a disposition of the case or
 17 that indicated an acquittal or a dismissal;

18 (2) the conviction was for:

19 (a) a misdemeanor offense; or

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

21 (3) the employee with a criminal record is under the supervision of the probation and parole division of
 22 the department of corrections and the employment has been approved by the supervising officer; or

23 (4) prior to the act, the employee provided a valid certificate of rehabilitation issued pursuant to
 24 [sections 1 and 2]."

26 NEW SECTION. Section 7. Codification instruction. (1) [Sections 1 through 2] are intended to be
 27 codified as an integral part of Title 37, chapter 1, part 2, and the provisions of Title 37, chapter 1, part 2, apply
 28 to [sections 1 through 2].

1 (2) [Section 3] is intended to be codified as an integral part of Title 27, chapter 1, part 7, and the
2 provisions of Title 27, chapter 1, part 7, apply to [section 3].

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

5
6 **NEW SECTION. Section 8. Effective date.** [This act] is effective on passage and approval.

7
8 **NEW SECTION. Section 9. Retroactive applicability.** [This act] applies retroactively, within the
9 meaning of 1-2-109, to an individual with a criminal record earned on or before [the effective date of this act]
10 who petitions a sentencing court ~~or the district court in the judicial district in which the person resides~~ for a
11 certificate of rehabilitation.

12 - END -