

## 1 SENATE BILL NO. 289

2 INTRODUCED BY B. HOVEN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE EMPLOYMENT APPLICATION PROCESS;  
5 PROHIBITING AN INITIAL APPLICATION FROM INCLUDING QUESTIONS REGARDING CRIMINAL  
6 HISTORY; AND PROVIDING RULEMAKING AUTHORITY."

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

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

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

15 (a) if the disclosure is required for the position by federal or state law, rule, or regulation;

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

17 (c) for hiring of an employee in the criminal justice system.

18 (3) This section does not prohibit:

19 (a) an employer from asking an applicant if the applicant has a criminal conviction or criminal history  
20 during the employment interview;

21 (b) an employer who has obtained a credit history in compliance with the Fair Credit Reporting Act, 15  
22 U.S.C. 1681, from considering an applicant's conviction history when making a hiring decision;

23 (c) a licensing board under Title 37 or other nonhiring authority required by law, rule, or regulation to  
24 obtain a criminal conviction record from requesting information from the applicant about the applicant's  
25 conviction history; or

26 (d) informing applicants that a background investigation may be required to qualify for consideration  
27 for employment.

28 (4) The employer shall consider the following factors in its hiring decisionmaking process and review

1 an applicant's conviction history in accordance with a policy that is consistent with a business necessity:

2 (a) the nature and gravity of the offense;

3 (b) the time that has passed since the offense; and

4 (c) the nature of the employment position sought.

5 (5) (a) For the purposes of this section, "conviction history" means a history of criminal convictions.

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

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9 **NEW SECTION. Section 2. Notification -- investigation -- penalties.** (1) The department shall  
10 provide notice of the provisions of [section 1] at least once a year to employers and employees through its  
11 official internet website and by any other means determined suitable by the department. The notice must state  
12 that an employer taking an applicant's conviction history into consideration shall also consider the applicant's  
13 restoration of rights under Article II, section 28, of the Montana constitution, and consider any information  
14 provided by the applicant regarding the applicant's rehabilitation.

15 (2) The department may:

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

17 (b) investigate complaints received under [section 1] and impose penalties of \$250 for a first or  
18 second violation under [section 1]. A third violation and all subsequent violations are subject to a fine of \$500  
19 for each violation. The fine must be deposited in a state special revenue account for transfer to the general fund  
20 on a semiannual basis, less 10% to pay for the costs of investigation.

21 (3) An employer may object to a penalty imposed pursuant to subsection (2) by requesting that a  
22 contested case proceeding be held by the department. The department shall conduct the contested case  
23 proceeding pursuant to the Montana Administrative Procedure Act.

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25 **NEW SECTION. Section 3. Rulemaking authority.** The department may adopt rules to implement  
26 the provisions of [sections 1 and 2].

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28 **NEW SECTION. Section 4. Codification instruction.** [Sections 1 through 3] are intended to be

1 codified as an integral part of Title 39, chapter 2, and the provisions of Title 39, chapter 2, apply to [sections 1  
2 through 3].

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