

1 SENATE BILL NO. 361

2 INTRODUCED BY B. HOVEN

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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:

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

18 (2) The petition may be filed with the sentencing court or the district court for the judicial district in
19 which the petitioner resides. The petition must be served on the county attorney in the county of the presiding
20 district court.

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

22 (4) The court shall issue a certificate of rehabilitation to the petitioner if the court determines that the
23 petitioner has met the requirements of [section 2].

24 (5) Upon issue of the certificate of rehabilitation, the court shall also issue an order including the
25 name of the individual receiving the certificate, that the individual has met the requirements for the certificate of
26 rehabilitation and is considered rehabilitated, and the date the certificate was issued.

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28 **NEW SECTION. Section 2. Certificate of rehabilitation -- conditions -- presumption.** (1) After a

1 petition is filed pursuant to [section 1(1)], a court shall issue a certificate of rehabilitation to an individual if the
2 individual:

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

4 (ii) provides evidence of achieving one or more of the achievements listed in 46-23-1027(2)(a) through
5 (2)(f); or

6 (b) (i) has completed 18 months of probation or parole supervision, a combination of 18 months of
7 probation and parole supervision, one-half of a deferred sentence, or 1 year in the community following the
8 discharge of a sentence; and

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

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

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

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

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

21 (3) If an individual with the certificate of rehabilitation is convicted of a felony or misdemeanor offense
22 described in subsection (1)(c), the county attorney in the jurisdiction where the conviction described in
23 subsection (1)(c) occurred shall file a notice with the issuing court of the conviction. In its sentencing order, the
24 court shall state that the conviction requires automatic revocation of a previously issued certificate of
25 rehabilitation. The court shall attach to the certificate of rehabilitation the order revoking the certificate based on
26 the conviction.

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

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2 **NEW SECTION. Section 3. Safe harbor for private landlords renting or leasing to individual**
 3 **with a criminal record.** A private landlord who complies substantially and in good faith with this section may
 4 not be held liable for acts committed by a tenant with a criminal record if:

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

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

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

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

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

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

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

20 (4) prior to the act, the student provided a valid certificate of rehabilitation issued pursuant to [sections
 21 1 and 2].

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

24 **"37-1-203. Conviction not a sole basis for denial -- when presumption of rehabilitation created.**

25 (1) Criminal convictions shall not operate as an automatic bar to being licensed to enter any occupation in the
 26 state of Montana. ~~No~~ A licensing authority ~~shall~~ may not refuse to license a person solely on the basis of a
 27 previous criminal conviction; ~~provided, however, where~~ unless a license applicant has been convicted of a
 28 criminal offense and ~~such~~ the criminal offense ~~relates to the public health, welfare, and safety as it applies~~ has

1 a direct relationship to the occupation for which the license is sought,~~the~~. The licensing agency may, after
 2 investigation, find that the applicant ~~so convicted~~with the previous criminal conviction has not been sufficiently
 3 rehabilitated as to warrant the public trust and deny the issuance of a license.

4 (2) A certificate of rehabilitation issued pursuant to [sections 1 and 2] creates a presumption of
 5 rehabilitation and good moral character."

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

9 **"39-2-710. Legal protections in relation to employing individuals with criminal records.** A
 10 private employer who acts ~~reasonably and complies~~ in good faith and substantially complies with this section
 11 may not be held liable regarding claims of negligent hiring or negligent employment for acts committed by an
 12 employee with a criminal record if the acts are committed outside the scope of the employment and:

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

15 (2) the conviction was for:

16 (a) a misdemeanor offense; or

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

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

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

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

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

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

1 Title 20, chapter 1, apply to [section 4].

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

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

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