

1 **** BILL NO. ****
2 INTRODUCED BY ****
3 BY REQUEST OF THE ****
4

5 SJ-19-5 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING EMPLOYERS FROM ASKING ABOUT
6 CONVICTION HISTORY ON JOB APPLICATIONS AND PROVIDING EXCEPTIONS; PROVIDING
7 RULEMAKING AUTHORITY."
8

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
15 history or an applicant's response to a question about criminal history on an initial application form:

16 (a) when the disclosure is required for the position by federal, state, or local law, rule, or regulation;

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

18 (c) for hiring by an employer whose business requires the retention of personal private information
19 and does not include customer lists maintained by most businesses.

20 (d) for hiring by any employer whose business operates on school district property;

21 (e) for hiring an employee who will work in direct proximity to:

22 (i) persons under 18 years of age; or

23 (ii) persons for whom the employer owes a particular duty of care because of the person's
24 vulnerability caused by a physical, mental, or developmental condition;

25 (f) for hiring of an employee in the criminal justice system; or

26 (g) for hiring of a nonemployee volunteer.

27 (3) This section does not prohibit:

28 (a) an employer who has obtained a credit history or acquired information in the usual course of

1 checking an applicant's references from also considering an applicant's conviction history or criminal history
2 when making a hiring decision; or

3 (b) a licensing board under Title 37 or other nonhiring authority required by law, rule, or regulation to
4 obtain a criminal history record from requesting information related to a from the person about the person's
5 conviction history or criminal history conviction history or a criminal history.

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

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

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

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

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12 **NEW SECTION. Section 2. Notification -- investigation -- penalties.** (1) The department of labor
13 and industry shall provide notice of the provisions of [section 1] at least once a year as part of its unemployment
14 compensation billing process to employers and employees through the department's official internet website
15 and provide notice by any other means available to the department in order to insure that employers and
16 employees with limited internet access are notified. The notice must state that an employer taking an
17 applicant's conviction history into consideration must also consider the applicant's restoration of rights under
18 Article II, section 28, of the Montana constitution and consider any information provided by the applicant
19 regarding the applicant's rehabilitation.

20 (2) The department may:

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

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

26 (3) An employer may object to a penalty imposed pursuant to subsection (2) by requesting that a
27 contested case proceeding be held by the department. The department shall conduct the contested case
28 proceeding pursuant to the Montana administrative procedure act.

