



AN ACT REVISING VETERANS' PREFERENCE HIRING LAWS; ALLOWING PUBLIC EMPLOYERS TO EXTEND A JOB INTERVIEW TO A VETERAN FOR EXISTING JOB VACANCIES FOR WHICH THE VETERAN QUALIFIES; INCLUDING A DISABLED VETERAN AS A PERSON WITH A DISABILITY; CLARIFYING THE ORDER OF PREFERENCES BETWEEN DISABLED VETERANS, PEOPLE WITH DISABILITIES, AND OTHERS ELIGIBLE FOR A HIRING PREFERENCE; EXTENDING RULEMAKING; AND AMENDING SECTIONS 39-29-102, 39-29-103, 39-29-112, 39-30-103, 39-30-107, AND 39-30-201, MCA.

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

Section 1. Section 39-29-102, MCA, is amended to read:

"39-29-102. Point preference or alternative preference in initial hiring for certain applicants -- substantially equivalent selection procedure. (1) Subject to the restrictions in subsections (2) and (3), whenever a public employer uses a scored procedure, an applicant for an initial hiring, as defined in 39-30-103, must have added to the applicant's score the following percentage points of the total possible points that may be granted in the scored procedure:

- (a) 5 percentage points if the applicant is a veteran; and
- (b) 10 percentage points if the applicant is a disabled veteran or an eligible relative.

(2) A veteran, disabled veteran, or eligible relative may not receive the percentage points provided for in subsection (1) unless the person:

- (a) is a United States citizen; and
- (b) meets the minimum qualifications required for the position. If no applicant meets the minimum qualifications and the public employer fills a training position, veterans' preference must be applied.

(3) A disabled veteran who receives 10 percentage points under subsection (1)(b) may not receive an additional 5 percentage points under subsection (1)(a).

(4) Whenever a public employer uses a selection procedure other than a scored procedure, the public employer shall give preference to a disabled veteran, a person with a disability, a veteran, an eligible relative as

defined in 39-29-101, and an eligible spouse as defined in 39-30-103, or veteran, in that order, over any nonpreferred applicant holding substantially equal qualifications, as defined in 39-30-103.

(5) The preference under this section may include a guaranteed job interview for a veteran who meets the required qualifications for the position and has requested a preference, as provided in 39-29-103, if the public employer provides for a job interview preference by rule or ordinance. The guarantee of a job interview is not part of the preference claim that may be enforced as provided in 39-29-104."

Section 2. Section 39-29-103, MCA, is amended to read:

"39-29-103. Notice and claim of preference. (1) A public employer shall, by posting or on the application form, give notice of the preference provided in 39-29-102.

(2) A job applicant who believes that the applicant is eligible to receive a preference shall claim the preference in writing before the time for filing applications for the position involved has passed. Failure to make a timely preference claim for a position is a complete defense to an action instituted by an applicant under 39-29-104 with regard to that position.

(3) If an applicant for a position makes a timely written preference claim, the public employer:

(a) may, under an existing rule or ordinance implementing this subsection (3)(a), guarantee to a veteran a job interview for a position for which the veteran meets the required qualifications and has submitted a preference claim; and

(b) shall give written notice of its hiring decision to the applicant claiming preference."

Section 3. Section 39-29-112, MCA, is amended to read:

"39-29-112. Adoption of rules. The department of administration shall adopt rules implementing this chapter, except that the decision of whether to guarantee a job interview to a veteran is a decision that may be made by a local government by ordinance. The department's rules apply to all local and state public employers."

Section 4. Section 39-30-103, MCA, is amended to read:

"39-30-103. Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Eligible spouse" means the spouse of a person with a disability determined by the department of public health and human services to have a 100% disability and who is unable to use the employment preference

because of the person's disability.

(2) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the ranks of the current employees of:

- (i) a department, as defined in 2-15-102, for a position within the executive branch;
- (ii) a legislative agency for a position within the legislative branch;
- (iii) a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;
- (iv) a city or town for a municipal position, including a city or municipal court position; and
- (v) a county for a county position, including a justice's court position.

(b) A personnel action limited to current employees of a specific public entity identified in this subsection (2), current employees in a reduction-in-force pool who have been laid off from a specific public entity identified in this subsection (2), or current participants in a federally authorized employment program is not an initial hiring.

(3) (a) "Mental impairment" means:

- (i) a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically disabling condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; or
- (ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term mental impairment does not include alcoholism or drug addiction and does not include any mental impairment, disease, or defect that has been asserted by the individual claiming the preference as a defense to any criminal charge.

(4) "Person with a disability" means:

- (a) an individual certified by the department of public health and human services to have a physical or mental impairment that substantially limits one or more major life activities, such as writing, seeing, hearing, speaking, or mobility, and that limits the individual's ability to obtain, retain, or advance in employment; or
- (b) any disabled veteran as defined in 39-29-101, except that the disabled veteran must be discharged under honorable conditions as defined in 39-29-101.

(5) "Position" means a position occupied by a permanent or seasonal employee as defined in 2-18-101 for the state or a position occupied by a similar permanent or seasonal employee with a public employer other

than the state. However, the term does not include:

(a) a position occupied by a temporary employee as defined in 2-18-101 for the state or a similar temporary employee with a public employer other than the state;

(b) a state or local elected official;

(c) employment as an elected official's immediate secretary, legal adviser, court reporter, or administrative, legislative, or other immediate or first-line aide;

(d) appointment by an elected official to a body such as a board, commission, committee, or council;

(e) appointment by an elected official to a public office if the appointment is provided for by law;

(f) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government;

(g) engagement as an independent contractor or employment by an independent contractor; or

(h) a position occupied by a student intern, as defined in 2-18-101.

(6) (a) "Public employer" means:

(i) any department, office, board, bureau, commission, agency, or other instrumentality of the executive, judicial, or legislative branch of the government of the state of Montana; and

(ii) any county, city, or town.

(b) The term does not include a school district, a vocational-technical program, a community college, the board of regents of higher education, the Montana university system, a special purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

(7) "Substantially equal qualifications" means the qualifications of two or more persons among whom the public employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons."

Section 5. Section 39-30-107, MCA, is amended to read:

"39-30-107. Certification of persons with disabilities. ~~The~~ Except for a disabled veteran, who must be certified as disabled by the U.S. department of veterans affairs, the department of public health and human services shall certify persons with disabilities for the purpose of employment preference as provided in this chapter."

Section 6. Section 39-30-201, MCA, is amended to read:

"39-30-201. Employment preference in initial hiring. (1) ~~(a)~~ Except as provided in 10-2-402 and subsection (3) of this section, in an initial hiring for a position, if a job applicant who is a person with a disability or eligible spouse meets the eligibility requirements contained in 39-30-202 and claims a preference as required by 39-30-206, a public employer shall hire the applicant over any other applicant with substantially equal qualifications who is not a preference-eligible applicant.

~~———— (b) In an initial hiring, a public employer shall hire a person with a disability over any other preference-eligible applicant with substantially equal qualifications.~~

(2) The employment preference provided for in subsection (1) does not apply to a personnel action described in 39-30-103(2)(b) or to any other personnel action that is not an initial hiring.

(3) To minimize confusion between 39-29-102 and this section, if a public employer in an initial hiring for a position uses a scoring procedure, the employer shall follow the guidelines in 39-29-102 if an applicant requests a veterans' or disabled veterans' preference. If a scoring procedure is not used, the employer shall provide preference first to a disabled veteran, then to a person with a disability, a veteran, an eligible relative as defined in 39-29-101, and an eligible spouse as defined in 39-30-103, in that order, over any applicant that does not have preference eligibility and that has substantially equal qualifications."

- END -

I hereby certify that the within bill,
SB 0185, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2013.

Speaker of the House

Signed this _____ day
of _____, 2013.

SENATE BILL NO. 185

INTRODUCED BY J. SESSO, D. ANKNEY, M. CAFERRO, L. JENT, C. LARSEN, R. SHAW

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