

## 1 HOUSE BILL NO. 518

2 INTRODUCED BY J. GURSKY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING CERTAIN PROTECTIONS FOR EMPLOYERS,  
5 EDUCATIONAL PROGRAMS OR INSTITUTIONS, AND LANDLORDS REGARDING EMPLOYMENT OF,  
6 ENROLLMENT OF, OR RENTAL TO INDIVIDUALS WHO HAVE CRIMINAL BACKGROUNDS; PROVIDING  
7 FOR A REHABILITATION CERTIFICATE AS A PRESUMPTION OF REHABILITATION AND A DEFENSE  
8 AGAINST LIABILITY; AMENDING SECTION 37-1-203, MCA; AND PROVIDING A RETROACTIVE  
9 APPLICABILITY DATE."  
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11 WHEREAS, the United States Equal Employment Opportunity Commission has determined that an  
12 employer's use of an individual's criminal history in making employment decisions may violate the prohibition  
13 against employment discrimination under Title VII of the Civil Rights Act of 1964, as amended; and

14 WHEREAS, based on longstanding court decisions, national data, and existing federal guidance, the  
15 Equal Employment Opportunity Commission has determined that criminal record exclusions in employment,  
16 education, and housing have disparate impacts based on race and national origin; and

17 WHEREAS, the Equal Employment Opportunity Commission and the United States Department of Labor  
18 have placed a high priority on ensuring adherence to their guidance and regulations to avoid discrimination of  
19 a protected class when hiring or employing an individual with a criminal record; and

20 WHEREAS, an employer may be found liable for negligent hiring or negligent employment of a person  
21 with a criminal history who is involved in a subsequent incident or act, regardless of whether the subsequent act  
22 or behavior was within the scope of employment; and

23 WHEREAS, it is important for employers and other entities, including educational institutions, to have a  
24 mechanism to avoid potential liability for negligence as they try to balance concerns about violating an individual's  
25 civil rights with concerns about hiring someone with a criminal record; and

26 WHEREAS, research conducted in the last 60 years has shown that offenders who find gainful  
27 employment, enter career fields, and complete vocational and postsecondary education programs have less than  
28 a 4% recidivism rate; and

29 WHEREAS, reducing the recidivism rate among ex-offenders increases community safety and  
30 productivity and reduces incarceration rates and the impact of incarceration rates on future generations.

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

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4 **NEW SECTION. Section 1. Safe harbor in relation to employing individuals with criminal records**5 **-- affirmative defense.** (1) An employer may not be held liable regarding claims of negligent hiring or negligent  
6 employment for acts committed by an employee with a criminal record if the acts are committed outside the scope  
7 of the employment and:8 (a) the employer reviewed an arrest record prior to hiring that did not show a disposition of the case or  
9 that indicated an acquittal or a dismissal;

10 (b) the conviction was for:

11 (i) a misdemeanor offense; or

12 (ii) an offense that was not related to the employment; or

13 (c) the employee with a criminal record has a valid rehabilitation certificate as provided in [section 2].

14 (2) Acceptance of a rehabilitation certificate is an affirmative defense for an employer against  
15 discrimination actions brought under the disparate impact provisions of Title VII of the Civil Rights Act of 1964,  
16 as amended, 42 U.S.C. 2000e, et seq.

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18 **NEW SECTION. Section 2. Rehabilitation certificate -- conditions -- presumption.** (1) Subject to19 subsection (2), after filing a petition with the sentencing court or the district court for the judicial district in which  
20 the individual with a criminal record resides, the individual with a criminal record must be issued a rehabilitation  
21 certificate if the individual:22 (a) has received a conditional discharge under 46-23-1020, issued by the department of corrections,  
23 granted by the court in the jurisdiction where the individual resides, or granted by the sentencing court or has  
24 completed 3 years of parole or probation or a combination of parole and probation; and25 (b) provides evidence of meeting two or more of the achievements listed in 46-23-1027 while in a  
26 community corrections program, serving a sentence on parole, or serving a sentence on probation or after 3 years  
27 in the community following discharge of a sentence.

28 (2) To be eligible for a rehabilitation certificate, an individual with a criminal record:

29 (a) may not have been convicted of a misdemeanor offense other than traffic violations, excluding  
30 violations under 61-8-401 or 61-8-406; and

1 (b) must have held gainful employment for at least 20 hours a week for a period equaling 3 years.

2 Periods of involuntary unemployment may not count against the individual.

3 (3) The rehabilitation certificate creates a presumption of rehabilitation and successful reentry into the  
4 community. The presumption is to be a bar against use of the individual's criminal record against the individual  
5 in:

6 (a) applications for attendance at a postsecondary educational institution or vocational training program  
7 or school; or

8 (b) applications for employment, housing, or professional and occupational licensure.

9 (4) (a) The presumption provided for in subsection (3) may be overcome based on substantial evidence  
10 that after receiving the rehabilitation certificate the individual is not rehabilitated or the board of pardons and  
11 parole returned the individual to a regular parolee status or revoked the parole.

12 (b) The presumption does not overcome federal or state limitations for which criminal background checks  
13 are required by law.

14 (5) The rehabilitation certificate is automatically revoked if the individual with the rehabilitation certificate  
15 is convicted of a felony or a misdemeanor offense as described in 46-23-1020(2)(b).

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17 **NEW SECTION. Section 3. Safe harbor in relation to accepting students with criminal records**

18 **-- affirmative action.** (1) An educational program or educational institution may not be held liable for acts  
19 committed by a student with a criminal record who is accepted into and enrolled in the program or institution if:

20 (a) the arrest record reviewed by the educational program or educational institution prior to accepting  
21 the student with a criminal record did not show a disposition of the case or indicated an acquittal or a dismissal;

22 (b) the student was convicted for a misdemeanor offense; or

23 (c) the student has a valid rehabilitation certificate as provided in [section 2].

24 (2) Acceptance of a rehabilitation certificate is an affirmative defense for an educational program or  
25 educational institution against discrimination actions brought under the disparate impact provisions of Title VII  
26 of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq.

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28 **NEW SECTION. Section 4. Safe harbor for landlords renting or leasing to individual with criminal**

29 **record.** (1) A landlord may not be held liable for acts committed by a tenant with a criminal record if the landlord  
30 reviewed the criminal history of the tenant prior to renting to the tenant and:

- 1 (a) the arrest record did not show a disposition of the case or indicated an acquittal or a dismissal;
- 2 (b) the conviction was for a minor offense; or
- 3 (c) the tenant provided to the landlord a valid rehabilitation certificate as provided in [section 2].
- 4 (2) Acceptance of a rehabilitation certificate is an affirmative defense for a landlord against discrimination
- 5 actions brought under the disparate impact provisions of Title VII of the Civil Rights Act of 1964, as amended, 42
- 6 U.S.C. 2000e, et seq.

7

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

9 **"37-1-203. Conviction not a sole basis for denial.** (1) Criminal convictions ~~shall do~~ not operate as an

10 automatic bar to being licensed to enter any occupation in the state of Montana. ~~No~~ A licensing authority ~~shall~~

11 may not refuse to license a person solely on the basis of a previous criminal conviction, ~~provided, however,~~

12 ~~where~~ However, if a license applicant has been convicted of a criminal offense and ~~such that~~ criminal offense

13 relates to the public health, welfare, and safety ~~as it applies to~~ in relation to the occupation for which the license

14 is sought, the licensing agency may, after investigation, find that the applicant ~~so~~ who has been convicted has

15 not been sufficiently rehabilitated as to warrant the public trust and deny the issuance of a license.

16 (2) A rehabilitation certificate provided for in [section 2] is presumptive evidence of rehabilitation."

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18 NEW SECTION. Section 6. Codification instruction. (1) [Section 1] is intended to be codified as an

19 integral part of Title 39, chapter 2, and the provisions of Title 39, chapter 2, apply to [section 1].

20 (2) [Section 2] is intended to be codified as an integral part of Title 46, chapter 23, part 10, and the

21 provisions of Title 46, chapter 23, part 10, apply to [section 2].

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

23 Title 20, chapter 1, apply to [section 3].

24 (4) [Section 4] is intended to be codified as an integral part of Title 70, chapter 24, and the provisions

25 of Title 70, chapter 24, apply to [section 4].

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27 NEW SECTION. Section 7. Retroactive applicability. [Section 2] applies retroactively, within the

28 meaning of 1-2-109, to individuals with criminal records acquired on or after October 1, 2009, who petition for a

29 rehabilitation certificate to the sentencing court or the district court for the judicial district in which the individual

30 resides.

31 - END -