**** BILL NO. ****

INTRODUCED BY ****

BY REQUEST OF THE ****

SJ-19-5 A BILL FOR AN ACT ENTITLED: “AN ACT PROHIBITING EMPLOYERS FROM ASKING ABOUT CONVICTION HISTORY ON JOB APPLICATIONSAND PROVIDING EXCEPTIONS; PROVIDING RULEMAKING AUTHORITY.”

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

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

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

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

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

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

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

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

(i) persons under 18 years of age; or

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

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

(g) for hiring of a nonemployee volunteer.

(3) This section does not prohibit:

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

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

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

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

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

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

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

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

(2) The department may:

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

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

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

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

NEW SECTION. **Section 4. Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 39, chapter 2, and the provisions of Title 39, chapter 2, apply to [sections 1 through 3].

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