

HOUSE BILL NO. 128

INTRODUCED BY L. JONES, W. GALT, L. MUSZKIEWICZ, J. SECKINGER, J. WEBER, D. POWERS, S. ROSENZWEIG, E. TILLEMAN, D. BEDEY, E. BUTTREY, M. CUFFE, W. CURDY, B. GILLESPIE, S. GIST, C. SPRUNGER, G. LAMMERS, D. LOGE, S. FITZPATRICK, B. LER, K. WALSH, G. OBLANDER, J. FITZPATRICK, S. MORIGEAU, M. THANE, P. TUSS, Z. WIRTH

A BILL FOR AN ACT ENTITLED: "AN ACT PROTECTING VOLUNTEER EMERGENCY SERVICE PROVIDERS FROM TERMINATION BY A PUBLIC OR PRIVATE EMPLOYER UNDER CERTAIN CONDITIONS; AND PROVIDING FOR A LEGAL CAUSE OF ACTION FOR WRONGFUL TERMINATION."

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

**NEW SECTION. Section 1. Termination of volunteer emergency services provider prohibited --**

**conditions -- definition.** (1) An agency may not terminate the employment of an employee who has completed the employee's probationary period because the employee has elected to serve as a volunteer emergency services provider or joined a volunteer emergency unit or organization, including but not limited to a municipal, rural, or subscription fire department.

(2) An employee who serves as a volunteer emergency services provider before [the effective date of this section] shall provide the agency with a written notification of the service within 30 days of [the effective date of this section]. An employee who joins a volunteer emergency unit or organization after [the effective date of this section] shall provide the agency with written notification within 30 days of joining the unit or organization. ~~Before accepting an offer of employment, an~~ An employee hired by an agency shall provide the agency with written notification that the employee is a volunteer emergency services provider within 30 days of hire.

(3) (a) ~~After Except as provided in subsection (1), after~~ written notification is provided, the agency may not terminate the employment of a volunteer emergency services provider if the employee is absent or late to work while performing volunteer emergency service duties during an emergency and the provisions in this subsection (3) are fulfilled.

(b) An employee who is a volunteer emergency services provider and is absent from or late to work while performing volunteer emergency service duties during an emergency shall notify the agency as soon as possible that the employee may be absent or late because of volunteer emergency service. If an employee's absence or delay would imperil public safety or prevent the agency from performing an essential function, the agency may require the employee to request and receive authorization prior to responding to an emergency.

(c) An agency may request that an employee who is a volunteer emergency service provider and is absent from or late to work provide a written statement from a supervisor of the volunteer emergency service organization that the employee responded to an emergency and provide the date, ~~and the time,~~ and duration of the emergency.

(d) An employee may not claim regular pay for the time that the employee is absent from or late to work while performing volunteer emergency service duties. If the pay was claimed, the agency may deduct that amount of regular pay for the time the employee was not present at work.

(4) An agency shall determine whether an employee may leave work to respond to an emergency as a part of the employee's volunteer emergency service.

(5) An employee whose employment is terminated in violation of this section may bring a civil action against the agency employer under 39-2-904. ~~The employee may seek reinstatement to the employee's former position, payment of back wages, reinstatement of fringe benefits, and, in situations in which seniority rights are granted, reinstatement of seniority rights.~~ If the employee prevails in a civil action, the employee is entitled to ~~an award of reasonable attorney fees and costs of the action~~ the remedies in 39-2-905. ~~An employee must commence an~~ The action must have commenced within 1 year after the date of termination of employment.

(6) For the purposes of this section, "volunteer emergency services provider" means a volunteer firefighter as defined in 7-33-4510, a volunteer who is an enrolled member of a volunteer fire department established under 7-33-4109, or a volunteer emergency medical technician as defined in 50-6-202, and who is not paid full-time by the entity for which the services are performed in the local service area, in a mutual aid agreement area, or in a state of disaster or emergency declared by the governor.

**NEW SECTION. Section 2. Termination of volunteer emergency services provider prohibited --**

1     **conditions -- definition.** (1) An employer may not terminate the employment of an employee because the  
2     employee has elected to serve as a volunteer emergency services provider or joined a volunteer emergency  
3     unit or organization, including but not limited to a municipal, rural, or subscription fire department.

4             (2)     An employee who serves as a volunteer emergency services provider before [the effective date  
5     of this section] shall provide the employer with a written notification of the service within 30 days of [the  
6     effective date of this section]. An employee who joins a volunteer emergency unit or organization after [the  
7     effective date of this section] shall provide the employer with written notification within 30 days of joining the unit  
8     or organization. Before accepting an offer of employment, an employee shall provide the employer with written  
9     notification that the employee is a volunteer emergency services provider.

10            (3)     (a) After written notification is provided, the employer may not terminate the employment of a  
11     volunteer emergency services provider if the employee is absent or late to work and the provisions in this  
12     subsection (3) are fulfilled.

13            (b)     An employee who is a volunteer emergency services provider and is absent from or late to  
14     work while performing volunteer emergency service duties shall notify the employer as soon as possible that  
15     the employee may be absent or late because of volunteer emergency service.

16            (c)     An employer may request that an employee who is a volunteer emergency service provider and  
17     is absent from or late to work provide a written statement from a supervisor of the volunteer emergency service  
18     organization that the employee responded to an emergency and provide the date and the time of the  
19     emergency.

20            (d)     An employee may not claim regular pay for the time that the employee is absent from or late to  
21     work while performing volunteer emergency service duties. If the pay was claimed, the employer may deduct  
22     that amount of regular pay for the time the employee was not present at work.

23            (4)     An employer shall determine whether an employee may leave work to respond to an  
24     emergency as a part of the employee's volunteer emergency service.

25            (5)     An employee whose employment is terminated in violation of this section may bring a civil  
26     action against the employer. The employee may seek reinstatement to the employee's former position, payment  
27     of back wages, reinstatement of fringe benefits, and, in situations in which seniority rights are granted,  
28     reinstatement of seniority rights. If the employee prevails in a civil action, the employee is entitled to an award

1 of reasonable attorney fees and costs of the action. An employee must commence an action within 1 year after  
2 the date of termination of employment.

3 (6) For the purposes of this section, "volunteer emergency services provider" means a volunteer  
4 firefighter as defined in 7-33-4510, a volunteer who is an enrolled member of a volunteer fire department  
5 established under 7-33-4109, or a volunteer emergency medical technician as defined in 50-6-202, and who is  
6 not paid full-time by the entity for which the services are performed in the local service area, in a mutual aid  
7 agreement area, or in a state of disaster or emergency declared by the governor.

8  
9 **NEW SECTION. Section 3. Codification instruction.** (1) [Section 1] is intended to be codified as an  
10 integral part of Title 2, chapter 18, part 6, and the provisions of Title 2, chapter 18, part 6, apply to [section 1].

11 (2) [Section 2] is intended to be codified as an integral part of Title 39, chapter 2, part 3, and the  
12 provisions of Title 39, chapter 2, part 3, apply to [section 2].

13 - END -