

HOUSE BILL NO. 635

INTRODUCED BY G. NIKOLAKAKOS, S. FITZPATRICK, B. LER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING HUMAN RIGHTS LAWS; PROHIBITING STATE OR LOCAL GOVERNMENT AGENCIES FROM FUNDING, ESTABLISHING, OR SUPPORTING DIVERSITY, EQUITY, AND INCLUSION PROGRAMS; ~~AND DEFINING "DIVERSITY, EQUITY, AND INCLUSION PROGRAM"~~ PROVIDING DEFINITIONS; PROVIDING LIMITATIONS; PROVIDING INVESTIGATORY AUTHORITY TO THE ATTORNEY GENERAL; PROVIDING FOR PRIVATE RIGHT OF ACTION; AND PROVIDING PENALTIES."

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

NEW SECTION. SECTION 1. DEFINITIONS. AS USED IN [SECTIONS 1 THROUGH 5], UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE, THE FOLLOWING DEFINITIONS APPLY:

(1) "DIVERSITY, EQUITY, AND INCLUSION" MEANS ANY PROGRAM OR INITIATIVE OF OR FUNDED BY A STATE OR LOCAL GOVERNMENT AGENCY THAT:

(A) DIRECTLY OR INDIRECTLY INFLUENCES HIRING, EMPLOYMENT, PROMOTION, TRAINING, RETENTION, OR RECRUITMENT PRACTICES WITH RESPECT TO RACE, COLOR, ETHNICITY, NATIONAL ORIGIN, SEX, OR RELIGION, OTHER THAN THROUGH THE USE OF NEUTRAL RACE, COLOR, ETHNICITY, NATIONAL ORIGIN, SEX, OR RELIGION HIRING, EMPLOYMENT, PROMOTION, TRAINING, RETENTION, OR RECRUITMENT PRACTICES OR WITH THE SOLE PURPOSE OF ENSURING COMPLIANCE WITH ANY APPLICABLE COURT ORDER OR STATE OR FEDERAL LAW; OR

(B) PROMOTES DIVISIVE CONCEPTS, RACE OR SEX STEREOTYPING, OR RACE OR SEX SCAPEGOATING.

(2) "DIVISIVE CONCEPTS" INCLUDES BUT IS NOT LIMITED TO THE FOLLOWING CONCEPTS:

(A) ONE RACE OR SEX IS INHERENTLY SUPERIOR TO ANOTHER RACE OR SEX;

(B) THE UNITED STATES IS FUNDAMENTALLY RACIST OR SEXIST;

(C) A PERSON, BY VIRTUE OF THE PERSON'S RACE OR SEX, IS INHERENTLY RACIST, SEXIST, OR OPPRESSIVE, WHETHER CONSCIOUSLY OR UNCONSCIOUSLY;

(D) A PERSON SHOULD BE DISCRIMINATED AGAINST OR RECEIVE ADVERSE TREATMENT SOLELY OR PARTLY

1 BECAUSE OF THE PERSON'S RACE OR SEX;

2 (E) MEMBERS OF ONE RACE OR SEX CANNOT AND SHOULD NOT ATTEMPT TO TREAT OTHERS WITHOUT  
3 RESPECT TO RACE OR SEX;

4 (F) A PERSON'S MORAL CHARACTER IS NECESSARILY DETERMINED BY THE PERSON'S RACE OR SEX;

5 (G) A PERSON, BY VIRTUE OF THE PERSON'S RACE OR SEX, BEARS RESPONSIBILITY FOR ACTIONS  
6 COMMITTED IN THE PAST BY OTHER MEMBERS OF THE SAME RACE OR SEX;

7 (H) A PERSON SHOULD FEEL DISCOMFORT, GUILT, ANGUISH, OR ANOTHER FORM OF PSYCHOLOGICAL  
8 DISTRESS ON ACCOUNT OF THE PERSON'S RACE OR SEX;

9 (I) MERITOCRACY OR TRAITS SUCH AS A HARD WORK ETHIC ARE RACIST OR SEXIST, OR WERE CREATED BY  
10 A PARTICULAR RACE TO OPPRESS ANOTHER RACE; OR

11 (J) ANY OTHER FORM OF RACE OR SEX STEREOTYPING OR ANY OTHER FORM OF RACE OR SEX  
12 SCAPEGOATING.

13 (3) "RACE OR SEX SCAPEGOATING" MEANS ASSIGNING FAULT, BLAME, OR BIAS TO A RACE OR SEX OR TO  
14 MEMBERS OF A RACE OR SEX BECAUSE OF THE MEMBERS' RACE OR SEX. THE TERM ENCOMPASSES ANY CLAIM THAT,  
15 CONSCIOUSLY OR UNCONSCIOUSLY, AND BY VIRTUE OF A PERSON'S RACE OR SEX, MEMBERS OF ANY RACE ARE  
16 INHERENTLY RACIST OR ARE INHERENTLY INCLINED TO OPPRESS OTHERS OR THAT MEMBERS OF A SEX ARE INHERENTLY  
17 SEXIST OR INHERENTLY INCLINED TO OPPRESS OTHERS.

18 (4) "RACE OR SEX STEREOTYPING" MEANS ASCRIBING CHARACTER TRAITS, VALUES, MORAL AND ETHICAL  
19 CODES, PRIVILEGES, STATUS, OR BELIEFS TO A RACE OR SEX, OR TO A PERSON BECAUSE OF THE PERSON'S RACE OR  
20 SEX.

21  
22 NEW SECTION. Section 2. Prohibition of diversity, equity, and inclusion programs in state and  
23 local government -- ~~definition~~ LIMITATIONS. (1) A state or local government agency may not:

- 24 (a) require an employee to engage in a diversity, equity, and inclusion program;
- 25 (b) spend public funds on a diversity, equity, and inclusion program;
- 26 (c) spend public funds to acquire services, supplies, information technology, or goods for a
- 27 diversity, equity, and inclusion program; or
- 28 (d) establish, support, sustain, or employ an office or individual whose duties include coordinating,

creating, developing, designing, implementing, organizing, or promoting a diversity, equity, and inclusion program; OR

(E) COMPEL, REQUIRE, INDUCE, OR SOLICIT ANY OFFICE OR INDIVIDUAL TO PROVIDE A DIVERSITY, EQUITY, AND INCLUSION STATEMENT OR GIVE PREFERENTIAL CONSIDERATION TO ANY OFFICE OR INDIVIDUAL BASED ON THE PROVISION OF A DIVERSITY, EQUITY, AND INCLUSION STATEMENT.

(2) Nothing in ~~this section~~ [SECTIONS 1 THROUGH 5] may be construed TO:

(a) ~~to prohibit~~ a state or local government agency from adopting a policy or program to comply with federal law, with Title 49, chapters 2 and 3, or with applicable court orders;

(b) ~~to limit~~ policies or programs designed to advance the educational goals set forth in Article X, section 1(2), of the Montana constitution; or

(c) ~~to interfere~~ with the sovereignty of tribal nations, reservations, or education pertaining to the history of Montana's Indian people.

(3) This section does not preclude a state or local government agency from offering training on sexual harassment or from operating an office or employing staff whose purpose is to ensure compliance with federal law, with Title 49, chapters 2 and 3, or with applicable court orders.

(4) VIOLATIONS OF [SECTIONS 1 THROUGH 5] MAY OVERLAP WITH VIOLATIONS OF TITLE 49, CHAPTER 2, COMMONLY KNOWN AS THE MONTANA HUMAN RIGHTS ACT. NOTHING IN [SECTIONS 1 THROUGH 5] MAY BE CONSTRUED AS LIMITING THE ENFORCEMENT OF TITLE 49 BY AGGRIEVED PARTIES, THE DEPARTMENT OF LABOR, OR THE COMMISSION ON HUMAN RIGHTS AS SET FORTH IN TITLE 49.

~~(4) For the purposes of this section, "diversity, equity, and inclusion program" means a program that requires an employee of a state or local government agency to participate in or attend a training, orientation, workshop, therapy, or similar activity that focuses on any of the following:~~

~~(a) describing or exposing structures, systems, relations of power, privilege, or subordination on the basis of race, sex, color, gender, ethnicity, gender identity, or sexual orientation;~~

~~(b) describing methods to identify, dismantle, or oppose structures, systems, relations of power, privilege, or subordination on the basis of race, sex, color, gender, ethnicity, gender identity, or sexual orientation;~~

~~(c) justifying differential treatment or benefit on the basis of race, sex, color, gender, ethnicity,~~

1 gender identity, or sexual orientation; or

2 (d) ~~—advancing theories of unconscious or implicit bias, cultural appropriation, transgenderism,~~  
3 ~~microaggression, microinvalidation, group marginalization, antiracism, systemic oppression, ethnocentrism,~~  
4 ~~structural racism or inequity, social justice, disparate impact, gender identity or theory, or any concept~~  
5 ~~substantially related to any of these theories.~~

6

7 NEW SECTION. SECTION 3. ENFORCEMENT. (1) THE ATTORNEY GENERAL HAS THE AUTHORITY TO  
8 INVESTIGATE AND PROSECUTE ALLEGED VIOLATIONS OF [SECTIONS 1 THROUGH 5].

9 (2) (a) When it appears to the attorney general that a person has engaged in, is engaging in, or is  
10 about to engage in any act or practice declared to be unlawful by [sections 1 through 5], or when the attorney  
11 general believes it to be in the public interest that an investigation should be made to ascertain whether a  
12 person in fact has engaged in, is engaging in, or is about to engage in any act or practice declared to be  
13 unlawful by [sections 1 through 5], the attorney general may execute in writing a civil investigative demand and  
14 serve any person who is believed to have information, documentary material, or physical evidence relevant to  
15 the alleged or suspected violation.

16 (b) The demand requires the person to furnish, under oath or otherwise, a written report setting  
17 forth the relevant facts and circumstances of which the person has knowledge or to appear and testify, or  
18 produce relevant documentary material or physical evidence for examination, at a reasonable time and place as  
19 may be stated in the investigative demand.

20 (3) (A) TO ACCOMPLISH THE OBJECTIVES AND TO CARRY OUT THE DUTIES PRESCRIBED BY [SECTIONS 1  
21 THROUGH 5], THE ATTORNEY GENERAL, IN ADDITION TO OTHER POWERS CONFERRED BY [SECTIONS 1 THROUGH 5], MAY  
22 ISSUE SUBPOENAS TO ANY PERSON, ADMINISTER AN OATH OR AFFIRMATION TO ANY PERSON, CONDUCT HEARINGS IN AID  
23 OF ANY INVESTIGATION OR INQUIRY, PRESCRIBE FORMS, AND ADOPT RULES AS MAY BE NECESSARY THAT HAVE THE  
24 FORCE OF LAW.

25 (B) THE POWERS CONFERRED BY THIS SECTION MAY NOT BE USED TO COMPEL ANY NATURAL PERSON TO  
26 FURNISH TESTIMONY OR EVIDENCE THAT MIGHT TEND TO INCRIMINATE THE PERSON OR SUBJECT THE PERSON TO A  
27 PENALTY OR FORFEITURE.

28 (4) SERVICE OF ANY NOTICE, DEMAND, OR SUBPOENA UNDER THIS SECTION MUST BE MADE PERSONALLY

1 WITHIN THIS STATE, BUT IF THIS CANNOT BE OBTAINED, SUBSTITUTE SERVICE MAY BE MADE IN THE MANNER PROVIDED IN  
2 THE MONTANA RULES OF CIVIL PROCEDURE.

3 (5) (A) IF A PERSON FAILS OR REFUSES TO FILE A STATEMENT OR TO REPORT OR OBEY A SUBPOENA OR  
4 INVESTIGATIVE DEMAND ISSUED BY THE ATTORNEY GENERAL, THE ATTORNEY GENERAL MAY, AFTER NOTICE, APPLY TO  
5 THE DISTRICT COURT AND, AFTER A HEARING, REQUEST AN ORDER:

6 (I) GRANTING INJUNCTIVE RELIEF TO RESTRAIN THE PERSON FROM ENGAGING IN ANY CONDUCT SPECIFIED  
7 IN [SECTIONS 1 THROUGH 5];

8 (II) INSTITUTING A FINE OF \$10,000; OR

9 (III) GRANTING OTHER RELIEF AS MAY BE REQUIRED UNTIL THE PERSON FILES THE STATEMENT OR REPORT  
10 OR OBEYS THE SUBPOENA OR INVESTIGATIVE DEMAND.

11 (B) ANY DISOBEDIENCE OF ANY FINAL ORDER ENTERED UNDER THIS SECTION BY ANY COURT MUST BE  
12 PUNISHED AS A CONTEMPT.

13 (6) WHENEVER THE ATTORNEY GENERAL HAS REASON TO BELIEVE THAT A PERSON IS USING, HAS USED,  
14 OR IS ABOUT TO KNOWINGLY USE ANY METHOD, ACT, OR PRACTICE DECLARED BY [SECTIONS 1 THROUGH 5] TO BE  
15 UNLAWFUL AND THAT A PROCEEDING WOULD BE IN THE PUBLIC INTEREST, THE ATTORNEY GENERAL MAY BRING AN  
16 ACTION IN THE NAME OF THE STATE AGAINST THE PERSON TO RESTRAIN BY TEMPORARY OR PERMANENT INJUNCTION OR  
17 BY TEMPORARY RESTRAINING ORDER THE USE OF THE UNLAWFUL ACT OR PRACTICE, UPON GIVING APPROPRIATE NOTICE  
18 TO THAT PERSON.

19  
20 NEW SECTION. SECTION 4. RIGHT OF PRIVATE ACTION. A PERSON WHO IS ADVERSELY AFFECTED BY A  
21 VIOLATION OF [SECTIONS 1 THROUGH 5] HAS A RIGHT OF PRIVATE ACTION AND MAY BRING AN ACTION AGAINST A PERSON  
22 OR ENTITY THAT HAS DIRECTLY VIOLATED [SECTIONS 1 THROUGH 5] FOR ACTUAL DAMAGES OR FOR \$5,000 FOR EACH  
23 VIOLATION.

24  
25 NEW SECTION. SECTION 5. PENALTIES. (1) (A) IN ADDITION TO ANY FINE THAT A PERSON MIGHT BE  
26 SUBJECT TO UNDER SECTION (2), A PERSON WHO VIOLATES THE TERMS OF AN INJUNCTION OR TEMPORARY RESTRAINING  
27 ORDER ISSUED UNDER [SECTION 3] SHALL PAY TO THE STATE A CIVIL FINE OF NOT MORE THAN \$10,000 FOR EACH  
28 VIOLATION.

(B) FOR THE PURPOSES OF THIS SECTION, THE DISTRICT COURT ISSUING AN INJUNCTION OR TEMPORARY RESTRAINING ORDER RETAINS JURISDICTION AND THE CAUSE MUST BE CONTINUED. IN THOSE CASES, THE DEPARTMENT OF JUSTICE, ACTING IN THE NAME OF THE STATE, MAY PETITION FOR RECOVERY OF CIVIL PENALTIES.

(2) (A) IN AN ACTION BROUGHT UNDER [SECTION 3], IF THE COURT FINDS THAT A PERSON IS WILLFULLY USING OR HAS WILLFULLY USED A METHOD, ACT, OR PRACTICE DECLARED UNLAWFUL BY [SECTIONS 1 THROUGH 5], THE ATTORNEY GENERAL, UPON PETITION TO THE COURT, MAY RECOVER ON BEHALF OF THE STATE A CIVIL FINE OF NOT MORE THAN \$10,000 FOR EACH VIOLATION.

(B) THE FINE PROVIDED FOR IN SUBSECTION (2)(A) IS IN ADDITION TO ANY LIABILITY A PERSON IS SUBJECT TO UNDER SUBSECTION (1).

NEW SECTION. Section 6. Codification instruction. ~~[Section 4 SECTIONS 1 THROUGH 5]~~ ~~is~~ ARE intended to be codified as a new chapter in Title 49, and the provisions of Title 49 apply to ~~[section 4 SECTIONS 1 THROUGH 5]~~.

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