

1 _____ BILL NO. _____

2 INTRODUCED BY _____

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING WHISTLEBLOWER LAWS; PROVIDING FOR BURDEN
5 SHIFT IF THE CHARGING PARTY MAKES A PRIMA FACIE CASE OF RETALIATION; PROVIDING FOR
6 RECOVERY OF DAMAGES IN MIXED MOTIVE CASES; AND AMENDING SECTIONS 39-2-904, 49-2-301,
7 AND 49-3-209, MCA."

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

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11 NEW SECTION. **Section 1. Burden shift -- damages in mixed motive case.** In a claim brought
12 under 39-2-904(1)(a), 49-2-301, or 49-3-209:

13 (1) if the charging party makes out a prima facie case of retaliation, the responding party has the
14 ultimate burden to prove by a preponderance of the evidence that the reason offered for its challenged action is
15 not a pretext for unlawful retaliation; and

16 (2) when the charging party proves that the respondent engaged in illegal retaliation but the
17 responding party proves the same action would have been taken in the absence of the unlawful discrimination
18 or illegal retaliation, the case is a mixed motive case. In a mixed motive case, the responding party may recover
19 damages.

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21 **Section 2.** Section 39-2-904, MCA, is amended to read:

22 **"39-2-904. Elements of wrongful discharge.** (1) A discharge is wrongful only if:

23 (a) it was in retaliation for the employee's refusal to violate public policy or for reporting a violation
24 of public policy;

25 (b) the discharge was not for good cause and the employee had completed the employer's
26 probationary period of employment;

27 (c) the employer materially violated an express provision of its own written personnel policy prior to
28 the discharge, and the violation deprived the employee of a fair and reasonable opportunity to remain in a

1 position of employment with the employer; or

2 (d) the employer terminated the employee solely based on the employee's legal expression of free
3 speech, including but not limited to statements made on social media.

4 (2) During a probationary period of employment, the employment may be terminated at the will of
5 either the employer or the employee on notice to the other for any reason or for no reason.

6 (3) The employer has the broadest discretion when making a decision to discharge any managerial
7 or supervisory employee.

8 (4) Claims brought for wrongful discharge pursuant to this section may be subject to the provisions
9 of [section 1]."

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11 **Section 3.** Section 49-2-301, MCA, is amended to read:

12 **"49-2-301. Retaliation prohibited.** (1) It is an unlawful discriminatory practice for a person,
13 educational institution, financial institution, or governmental entity or agency to discharge, expel, blacklist, or
14 otherwise discriminate against an individual because the individual has opposed any practices forbidden under
15 this chapter or because the individual has filed a complaint, testified, assisted, or participated in any manner in
16 an investigation or proceeding under this chapter.

17 (2) Claims brought for wrongful discharge pursuant to this section may be subject to the provisions
18 of [section 1]."

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20 **Section 4.** Section 49-3-209, MCA, is amended to read:

21 **"49-3-209. Retaliation prohibited.** (1) It is an unlawful discriminatory practice for a state or local
22 governmental agency to discharge, expel, blacklist, or otherwise discriminate against an individual because the
23 individual has opposed any practices forbidden under this chapter or because the individual has filed a
24 complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter.

25 (2) Claims brought for wrongful discharge pursuant to this section may be subject to the provisions
26 of [section 1]."

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28 NEW SECTION. **Section 5. Codification instruction.** [Section 1] is intended to be codified as an

1 integral part of Title 25, and the provisions of Title 25 apply to [section 1].

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