

HOUSE BILL 531

Introduced by Phillips

1/31	Introduced
1/31	Referred to Labor & Employment Relations
2/01	First Reading
2/12	Hearing
2/16	Tabled in Committee

1 HOUSE BILL NO. 531  
 2 INTRODUCED BY Phelley

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE WORKFORCE  
 5 DRUG ABUSE PREVENTION ACT; REQUIRING RECIPIENTS OF CERTAIN  
 6 STATE GRANTS AND CONTRACTS TO IMPLEMENT EMPLOYEE DRUG ABUSE  
 7 PREVENTION PROGRAMS AS A REQUIREMENT OF RECEIVING THE GRANTS  
 8 OR CONTRACTS; REQUIRING INDIVIDUAL GRANTEES AND CONTRACTORS  
 9 TO CERTIFY THAT THEY WILL ABSTAIN FROM THE UNLAWFUL  
 10 MANUFACTURE, DISTRIBUTION, POSSESSION, OR USE OF UNLAWFUL  
 11 DRUGS DURING THE TERM OF A STATE GRANT OR CONTRACT;  
 12 PROVIDING PENALTIES; AND AMENDING SECTION 18-4-241, MCA."

13  
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 15 NEW SECTION. Section 1. Short title. [Sections 1  
 16 through 7] may be cited as the "Workforce Drug Abuse  
 17 Prevention Act".

18 NEW SECTION. Section 2. Definitions. As used in  
 19 [sections 1 through 7], the following definitions apply:

- 20 (1) "Contractor" means a person having a contract in  
 21 the amount of \$10,000 or more with a state agency.
- 22 (2) "Controlled substance" means a dangerous drug as  
 23 defined in 50-32-101 and as listed or to be listed in the  
 24 schedule in 50-32-222, 50-32-224, 50-32-226, 50-32-229, or  
 25 50-32-232.

1 (3) "Employee" means an individual engaged in the  
 2 performance of work for a grantee or contractor.

3 (4) "Grantee" means a person, other than a state  
 4 agency, who applies for or receives a grant in the amount of  
 5 \$10,000 or more from a state agency.

6 NEW SECTION. Section 3. Award of contracts and grants  
 7 to persons other than individuals -- requirements. A person,  
 8 other than an individual, is not eligible to receive a grant  
 9 for any purpose or be awarded a contract for the provision  
 10 of any property or services to a state agency unless the  
 11 person makes a written certification to the granting or  
 12 contracting agency that it has adopted and implemented a  
 13 drug abuse prevention program that includes a written policy  
 14 designed to prevent the unlawful manufacture, distribution,  
 15 possession, or use of controlled substances by employees.  
 16 The policy must include the annual distribution to each  
 17 employee of:

- 18 (1) standards of conduct that clearly prohibit, at a  
 19 minimum, the unlawful manufacture, distribution, possession,  
 20 or use of a controlled substance by an employee on the  
 21 grantee's or contractor's property or while the employee is  
 22 performing duties for the grantee or contractor;
- 23 (2) a description of the applicable legal sanctions  
 24 under federal, state, or local law for the unlawful  
 25 manufacture, distribution, possession, or use of a



1 controlled substance and information as to how an employee  
2 may notify law enforcement authorities regarding suspected  
3 infractions of the laws;

4 (3) a description of the health risks associated with  
5 the use of a controlled substance;

6 (4) a description of drug counseling, treatment, or  
7 rehabilitation programs that are available to employees; and

8 (5) a clear statement that the grantee or contractor  
9 will impose sanctions on an employee for any violation of  
10 the standards of conduct referred to in subsection (1),  
11 consistent with federal, state, and local law, and a  
12 description of those sanctions, up to and including  
13 termination of employment and possible referral for  
14 prosecution for any violation of federal or state law. In  
15 addition to the sanctions, an employer may require an  
16 affected employee to participate in an appropriate drug  
17 rehabilitation program as a condition of continued  
18 employment.

19 NEW SECTION. Section 4. Award of contracts and grants  
20 to individuals. A state agency may not enter into a contract  
21 with or make a grant to an individual unless the contract or  
22 grant includes a certification by the individual that, at a  
23 minimum, states that the individual will not be under the  
24 influence of or engage in the unlawful manufacture,  
25 distribution, possession, or use of a controlled substance

1 while the contract or grant is in force.

2 NEW SECTION. Section 5. Contractors -- suspension,  
3 termination, or debarment. A contract awarded by a state  
4 agency is subject to suspension of payments under the  
5 contract or termination of the contract, or both, and the  
6 contractor or the individual who entered into the contract  
7 with the state agency is subject to suspension or debarment  
8 in accordance with the requirements of this section if the  
9 head of the contracting agency or his designee has  
10 determined, in writing, that the contractor has failed to  
11 implement the requirements of the certification required in  
12 [section 3 or 4], including the enforcement of sanctions  
13 required by [section 3]. Any suspension of payments,  
14 termination of payments, suspension of eligibility, or  
15 debarment must be conducted in accordance with 18-4-241 and  
16 any rules implementing that section. Upon the issuance of a  
17 final decision requiring debarment of a contractor or  
18 individual, the contractor or individual is ineligible for  
19 award of a contract by a state agency, and for participation  
20 in any future provision of property or services to a state  
21 agency, for a period specified in the decision, which may  
22 not be less than 1 year or exceed 5 years.

23 NEW SECTION. Section 6. Grantees -- suspension,  
24 termination, or debarment. Each grant awarded by a state  
25 agency is subject to suspension of payments under the grant

1 or termination of the grant, or both, and the grantee or the  
 2 individual who received the grant from the state agency is  
 3 subject to suspension or debarment in accordance with the  
 4 requirements of this section if the head of the granting  
 5 agency or his designee has determined, in writing, that the  
 6 grantee has failed to implement the requirements of the  
 7 certification required in [section 3 or 4], including the  
 8 enforcement of sanctions required by [section 3]. A  
 9 suspension of payments, termination of payments, suspension  
 10 of eligibility, or debarment must be conducted in accordance  
 11 with 18-4-241 and any rules implementing that section. Upon  
 12 the issuance of a final decision requiring debarment of a  
 13 grantee or individual, the grantee or individual is  
 14 ineligible for award of a grant by a state agency, and for  
 15 participation in any future grant from a state agency, for a  
 16 period specified in the decision, which may not be less than  
 17 1 year or exceed 5 years.

18 NEW SECTION. Section 7. Waiver. A termination,  
 19 suspension of payments, suspension of eligibility, or  
 20 debarment under [section 5 or 6] may be waived by the  
 21 governor with respect to a particular contract or grant if  
 22 the governor determines that the action would severely  
 23 disrupt the operation of the agency or would not be in the  
 24 public interest.

25 **Section 8.** Section 18-4-241, MCA, is amended to read:

1 **\*18-4-241. Authority to remove or suspend from vendors'**  
 2 **list.** (1) The department may remove a person for cause from  
 3 consideration for award of contracts. The Except as provided  
 4 in [sections 5 and 6], the removal may not be for a period  
 5 of more than 3 years.

6 (2) The department may suspend a person from  
 7 consideration for award of contracts if there is probable  
 8 cause to believe that the person has engaged in activities  
 9 that may lead to removal. The Except as provided in  
 10 [sections 5 and 6], the suspension may not be for a period  
 11 exceeding 3 months unless an indictment has been issued for  
 12 an offense that would be a cause for removal under  
 13 subsection (3), in which case the suspension must, at the  
 14 request of the attorney general, remain in effect until  
 15 after the trial of the suspended person. The authority to  
 16 remove or suspend must be exercised in accordance with rules  
 17 adopted by the department.

18 (3) The causes for removal or suspension include the  
 19 following:

20 (a) violation of contract provisions, as set forth in  
 21 (i) and (ii) of this subsection, of a character which that  
 22 is regarded by the department to be so serious as to justify  
 23 removal action:

24 (i) deliberate failure without good cause to perform in  
 25 accordance with the specifications or within the time limit

1 provided in the contract; or

2 (ii) a recent record of failure to perform or of  
3 unsatisfactory performance in accordance with the terms of  
4 one or more contracts, provided that failure to perform or  
5 unsatisfactory performance caused by acts beyond the control  
6 of the contractor may not be considered to be a basis for  
7 removal;

8 (b) failure to respond to a number of solicitations  
9 over a period of time as determined by the department in  
10 accordance with rules, and after adequate written notice to  
11 the affected person of the intent to remove or suspend;

12 (c) any other cause the department determines to be so  
13 serious and compelling as to affect responsibility as a  
14 state contractor, including removal by another governmental  
15 entity for any cause listed in the department's rules; and

16 (d) failure to comply with the provisions of Title 39,  
17 chapter 51, or Title 39, chapter 71; and

18 (e) failure to comply with the provisions of [sections  
19 1 through 7].

20 (4) The department shall issue a written decision to  
21 remove or suspend, stating the reasons for the action taken.  
22 A copy of the decision must be mailed or otherwise furnished  
23 immediately to the person involved."

24 NEW SECTION. Section 9. Severability. If a part of  
25 {this act} is invalid, all valid parts that are severable

1 from the invalid part remain in effect. If a part of {this  
2 act} is invalid in one or more of its applications, the part  
3 remains in effect in all valid applications that are  
4 severable from the invalid applications.

-End-