

1 *House* BILL NO. 196, *Mark Bohlen*
 2 INTRODUCED BY *Nancy Holmbeck*
 3 *House*
 4 BILL FOR AN ACT ENTITLED "AN ACT IMPLEMENTING ARTICLE *Scully*
 5 SECTION 4 OF THE 1972 MONTANA CONSTITUTION TO PROVIDE *Restant Lester VINCENT*
 6 A CODE OF ETHICS PROHIBITING CONFLICT BETWEEN PUBLIC DUTY *LOCKREN*
 7 AND PRIVATE INTEREST FOR LEGISLATORS AND ALL STATE AND LOCAL
 8 OFFICERS AND EMPLOYEES; AMENDING SECTION 94-7-401, R.C.M.
 9 1947.

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 12 Section 1. Statement of purpose. The purpose of this
 13 act is to set forth a code of ethics prohibiting conflict
 14 between public duty and private interest as required by the
 15 constitution of Montana. This code recognizes distinctions
 16 between legislators, other officers and employees of state
 17 government, and officers and employees of local government,
 18 prescribing some standards of conduct common to all
 19 categories and some standards of conduct adapted to each
 20 category. The codes set forth in this act recognize that
 21 some actions are conflicts per se between public duty and
 22 private interest while other actions may or may not pose
 23 such conflicts depending upon the surrounding circumstances.

24 Section 2. Definitions. As used in this act:
 25 (1) "Business" includes a corporation, a partnership,

1 a sole proprietorship, a trust or foundation, or any other
 2 individual or organization carrying on a business, whether
 3 or not operated for profit.

4 (2) "Compensation" means any money, thing of value, or
 5 economic benefit conferred on or received by any person in
 6 return for services rendered or to be rendered by himself or
 7 another.

8 (3) "Employee" means any temporary or permanent
 9 employee of the state or any subdivision thereof, including
 10 members of boards, commissions, and committees, and
 11 employees under contract to the state, but excluding
 12 legislators and all judicial officers.

13 (4) "Financial interest" means an interest held by an
 14 individual, his spouse, or minor children which is:

- 15 (a) an ownership interest in a business;
- 16 (b) a creditor interest in an insolvent business;
- 17 (c) an employment, or prospective employment for which
- 18 negotiations have begun;
- 19 (d) an ownership interest in real or personal
- 20 property;
- 21 (e) a loan or other debtor interest;
- 22 (f) a directorship or officership in a business.

23 (5) "Official act" or "official action" means a vote,
 24 decision, recommendation, approval, disapproval, or other
 25 action, including inaction, which involves the use of

1 discretionary authority.

2 (6) "Public officer" includes any state officer or any
3 elected officer of any subdivision of the state excluding
4 legislators, and the judiciary.

5 (7) "State agency" includes the state, the legislature
6 and its committees, all executive departments, boards,
7 commissions, committees, bureaus, offices, the university
8 system and all independent commissions and other
9 establishments of the state government, but excluding the
10 courts.

11 (8) "State officer" includes all elected officers and
12 directors of the executive branch of state government as
13 defined in section 32A-103.

14 Section 3. Public trust. (1) The holding of public
15 office or employment is a public trust, created by the
16 confidence which the electorate reposes in the integrity of
17 public officers, legislators, and employees.

18 A public officer, legislator or employee shall carry
19 out his duties for the benefit of the people of the state.
20 He may not use his office, the influence created by his
21 official position, or the inside information gained by
22 virtue of that position, to advance any of his own, his
23 relative's, or his associate's personal economic interests,
24 other than advancing such strictly incidental benefits as
25 may accrue to any of them from the enactment or

1 administration of laws affecting the public generally.

2 (2) A public officer, legislator or employee whose
3 conduct departs from his fiduciary duty under this section
4 is liable to the people of the state as a trustee of
5 property is liable to the beneficiary under section 86-310,
6 and shall suffer such other liabilities as a private
7 fiduciary would suffer for abuse of his trust. The county
8 attorney of the county where the trust is violated may bring
9 appropriate judicial proceedings on behalf of the people.
10 Any accounting collected in such actions shall be paid to
11 the general fund of the county.

12 (3) This section sets forth the fundamental standard
13 of conduct for all public officers, legislators, and
14 employees. The following sections set forth various rules
15 of conduct, the transgression of any of which is, as such, a
16 violation of this standard, and various ethical principles,
17 the transgression of which may, in some cases, contribute to
18 a violation of this standard. The enumeration of prohibited
19 acts and cautioned acts does not exculpate an act not thus
20 enumerated if that act amounts to a breach of fiduciary
21 duty.

22 Section 4. Rules of conduct for all public officers,
23 legislators, and employees. Proof of commission of any act
24 enumerated in this section is proof that the actor has
25 breached his fiduciary duty. A public officer, legislator

1 or employee may not:

2 (1) Accept a gift, or accept an economic benefit
3 tantamount to a gift, under circumstances from which it can
4 reasonably be inferred that a major purpose of the gift is
5 to influence him in the performance of his official duties
6 or to reward him for official action he has taken.

7 An economic benefit tantamount to a gift includes,
8 without limitation, a loan at a rate of interest
9 substantially lower than the commercial rate then currently
10 prevalent for similar loans, and compensation received for
11 private services rendered at a rate substantially exceeding
12 the fair market value of such services. Campaign
13 contributions reported as required by statute are not gifts
14 or economic benefits tantamount to gifts.

15 (2) Disclose or use confidential information acquired
16 in the course of his official duties in order to further his
17 personal economic interests.

18 Section 5. Rules of conduct for legislators. Proof of
19 commission of any act enumerated in this section is proof
20 that the legislator committing the act has breached his
21 fiduciary duty under section [3 of this act]. A legislator
22 may not:

23 (1) Accept a fee, contingent fee, or any other
24 compensation, except his official compensation provided by
25 statute, for promoting or opposing the passage of

1 legislation.

2 (2) Seek other employment for himself or contract for
3 his services by the use or attempted use of his office.

4 Section 6. Rules of conduct for state officers and
5 state employees. Proof of commission of any act enumerated
6 in this section is proof that the actor has breached his
7 fiduciary duty. A state officer or a state employee, may
8 not:

9 (1) Use state time, facilities, or equipment for his
10 private business purposes.

11 (2) Engage in a substantial financial transaction for
12 his private business purposes with a person whom he inspects
13 or supervises in the course of his official duties.

14 (3) Perform an official act directly affecting a
15 business or other undertaking in which he either has a
16 substantial financial interest or is engaged as counsel,
17 consultant, representative, or agent. A department head or
18 a member of a quasi-judicial or rule-making board may
19 perform an official act notwithstanding this subsection if
20 his participation is necessary to the administration of a
21 statute and if he complies with the voluntary disclosure
22 procedures under section [10 of this act].

23 (4) Assist any person for a fee or other compensation
24 in obtaining a contract, claim, license, or other economic
25 benefit from his agency.

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1 (5). Assist any person for a contingent fee in
2 obtaining a contract, claim, license, or other economic
3 benefit from any state agency.

4 Section 7. Rules of conduct for local government
5 officers and employees. Proof of commission of any act
6 enumerated in this section is proof that the actor has
7 breached his fiduciary duty. An officer or employee of
8 local government shall not:

9 (1) Engage in a substantial financial transaction for
10 his private business purposes with a person whom he inspects
11 or supervises in the course of his official duties.

12 (2) Perform an official act directly affecting a
13 business or other undertaking in which he either has a
14 substantial financial interest or is engaged as counsel,
15 consultant, representative, or agent. A member of the
16 governing body of a local government may perform an official
17 act notwithstanding this section when his participation is
18 necessary to obtain a quorum or otherwise enable the body to
19 act, if he complies with the voluntary disclosure procedures
20 under section [10 of this act].

21 Section 8. Ethical principles for legislators. The
22 principles in this section are intended only as guides to
23 legislator conduct, and do not constitute violations as such
24 of the public trust of legislative office. (1) Where
25 feasible, and taking into account the fact that legislative

1 service is part-time, a legislator should avoid accepting or
2 retaining an economic benefit which presents a substantial
3 threat to his independence of judgment.

4 (2) When a legislator must take official action on a
5 legislative matter as to which he has a conflict situation
6 created by a personal, family, or client legislative
7 interest, he should consider eliminating the interest
8 creating the conflict or abstaining from the official
9 action. In making his decision, he should further consider:

10 (a) whether the conflict impedes his independence of
11 judgment;

12 (b) the effect of his participation on public
13 confidence in the integrity of the legislature; and

14 (c) whether his participation is likely to have any
15 significant effect on the disposition of the matter.

16 Section 9. Ethical principles for all public officers,
17 legislators, and employees. The principles in this section
18 are intended as guides to conduct and do not constitute
19 violations as such of the public trust of office or
20 employment in state or local government. However, failure
21 to observe one of these principles may be taken as evidence
22 tending to establish, in conjunction with all the other
23 facts of a case, a breach of fiduciary duty. (1) A public
24 officer (other than a legislator) or employee should not
25 acquire an interest in any business or undertaking which he

1 has reason to believe may be directly affected to its
2 economic benefit by official action to be taken by his
3 agency.

4 (2) A public officer, legislator, or employee should
5 not, within the twelve (12) months following the termination
6 of his office or employment, assist or represent any person
7 for a fee or other consideration, in connection with certain
8 matters with which he was directly involved during his term
9 or employment. These matters are legislation or rules which
10 he actively helped to formulate, and applications, claims,
11 or contested cases in the consideration of which he was an
12 active participant.

13 (3) A public officer, legislator, or employee should
14 not perform an official act directly affecting a business or
15 other undertaking to its economic detriment when he has a
16 substantial financial interest in a competing firm or
17 undertaking.

18 Section 10. Voluntary disclosure. A public officer,
19 legislator, or employee may, prior to acting in a manner
20 which may impinge on his fiduciary duty, disclose the nature
21 of his private interest which creates the conflict. He
22 shall make the disclosure to the enforcement authority,
23 listing the amount of his financial interest, if any, the
24 purpose and duration of his services rendered, if any, and
25 the compensation received for the services, or such other

1 information as is necessary to describe his interest. If he
2 then performs the official act involved, he shall state for
3 the record the fact and summary nature of the interest
4 disclosed at the time of performing the act.

5 Section 11. Powers of the enforcement authority. The
6 agency empowered to enforce this chapter, hereafter called
7 the enforcement authority, may:

8 (1) Issue and cause to be published advisory opinions,
9 with such deletions as may be necessary to protect the
10 identity of the requesting party, at the request of a public
11 officer, legislator, or employee contemplating an action
12 which may or may not be a breach of his fiduciary duty.

13 (2) Keep, and permit reasonable public access to,
14 voluntary disclosure statements.

15 (3) Make rules for the conduct of its affairs under
16 this chapter.

17 Section 12. Vesting of enforcement authority. If the
18 office of election commissioner is established by the
19 Forty-fourth Legislature, the election commissioner is the
20 enforcement authority under this chapter. If the office of
21 election commissioner is not established in 1975, the
22 enforcement authority is the board of personnel appeals.

23 Section 13. Section 94-7-401, R.C.M. 1947, is amended
24 to read as follows:

25 "94-7-401. Official misconduct. (1) A public servant

1 commits the offense of official misconduct when, in his
2 official capacity, he commits any of the following acts:

3 (a) purposely or negligently fails to perform any
4 mandatory duty as required by law or by a court of competent
5 jurisdiction; or

6 (b) knowingly performs an act in his official capacity
7 which he knows is forbidden by law; or

8 (c) with the purpose to obtain advantage for himself or
9 another, he performs an act in excess of his lawful
10 authority or in breach of the public trust of his office or
11 employment; or

12 (d) solicits or knowingly accepts for the performance
13 of any act a fee or reward which he knows is not authorized
14 by law.

15 (2) A public servant convicted of the offense of
16 official misconduct shall be fined not to exceed five
17 hundred dollars (\$500) or be imprisoned in the county jail
18 for a term not to exceed six (6) months, or both.

19 (3) The district court shall have exclusive
20 jurisdiction in prosecutions under this section, and any
21 action for official misconduct must be commenced by an
22 information filed after leave to file has been granted by
23 the district court or after a grand jury indictment has been
24 found.

25 (4) A public servant who has been charged as provided

1 in subsection (3) shall be suspended from his office without
2 pay pending final judgment. Upon final judgment of
3 conviction he shall permanently forfeit his office. Upon
4 acquittal he shall be reinstated in his office and shall
5 receive all back pay.

6 (5) This section does not affect any power conferred by
7 law to impeach or remove any public servant or any
8 proceeding authorized by law to carry into effect such
9 impeachment or removal."

-End-

Approved by Committee on Judiciary

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House BILL NO. *196* *Mark Babcock*

INTRODUCED BY *Way Holmes* *Kenneth*

Bill for an Act ENTITLED "AN ACT IMPLEMENTING ARTICLE 10, SECTION 1 OF THE 1972 MONTANA CONSTITUTION TO PROVIDE A CODE OF ETHICS PROHIBITING CONFLICT BETWEEN PUBLIC DUTY AND PRIVATE INTEREST FOR LEGISLATORS AND ALL STATE AND LOCAL OFFICERS AND EMPLOYEES; AMENDING SECTION 94-7-401, R.C.M. 1947.

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

Section 1. Statement of purpose. The purpose of this act is to set forth a code of ethics prohibiting conflict between public duty and private interest as required by the constitution of Montana. This code recognizes distinctions between legislators, other officers and employees of state government, and officers and employees of local government, prescribing some standards of conduct common to all categories and some standards of conduct adapted to each category. The codes set forth in this act recognize that some actions are conflicts per se between public duty and private interest while other actions may or may not pose such conflicts depending upon the surrounding circumstances.

Section 2. Definitions. As used in this act:

(1) "Business" includes a corporation, a partnership,

a sole proprietorship, a trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

(2) "Compensation" means any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.

(3) "Employee" means any temporary or permanent employee of the state or any subdivision thereof, including members of boards, commissions, and committees, and employees under contract to the state, but excluding legislators and all judicial officers.

(4) "Financial interest" means an interest held by an individual, his spouse, or minor children which is:

- (a) an ownership interest in a business;
- (b) a creditor interest in an insolvent business;
- (c) an employment, or prospective employment for which negotiations have begun;
- (d) an ownership interest in real or personal property;
- (e) a loan or other debtor interest;
- (f) a directorship or officership in a business.

(5) "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of

1 discretionary authority.

2 (6) "Public officer" includes any state officer or any
3 elected officer of any subdivision of the state excluding
4 legislators, and the judiciary.

5 (7) "State agency" includes the state, the legislature
6 and its committees, all executive departments, boards,
7 commissions, committees, bureaus, offices, the university
8 system and all independent commissions and other
9 establishments of the state government, but excluding the
10 courts.

11 (8) "State officer" includes all elected officers and
12 directors of the executive branch of state government as
13 defined in section 82A-103.

14 Section 3. Public trust. (1) The holding of public
15 office or employment is a public trust, created by the
16 confidence which the electorate reposes in the integrity of
17 public officers, legislators, and employees.

18 A public officer, legislator or employee shall carry
19 out his duties for the benefit of the people of the state.
20 He may not use his office, the influence created by his
21 official position, or the inside information gained by
22 virtue of that position, to advance any of his own, his
23 relative's, or his associate's personal economic interests,
24 other than advancing such strictly incidental benefits as
25 may accrue to any of them from the enactment or

1 administration of laws affecting the public generally.

2 (2) A public officer, legislator or employee whose
3 conduct departs from his fiduciary duty under this section
4 is liable to the people of the state as a trustee of
5 property is liable to the beneficiary under section 96-310,
6 and shall suffer such other liabilities as a private
7 fiduciary would suffer for abuse of his trust. The county
8 attorney of the county where the trust is violated may bring
9 appropriate judicial proceedings on behalf of the people.
10 Any accounting collected in such actions shall be paid to
11 the general fund of the county.

12 (3) This section sets forth the fundamental standard
13 of conduct for all public officers, legislators, and
14 employees. The following sections set forth various rules
15 of conduct, the transgression of any of which is, as such, a
16 violation of this standard, and various ethical principles,
17 the transgression of which may, in some cases, contribute to
18 a violation of this standard. The enumeration of prohibited
19 acts and cautioned acts does not exculpate an act not thus
20 enumerated if that act amounts to a breach of fiduciary
21 duty.

22 Section 4. Rules of conduct for all public officers,
23 legislators, and employees. Proof of commission of any act
24 enumerated in this section is proof that the actor has
25 breached his fiduciary duty. A public officer, legislator

1 or employee may not:

2 (1) Accept a gift, or accept an economic benefit
3 tantamount to a gift, under circumstances from which it can
4 reasonably be inferred that a major purpose of the gift is
5 to influence him in the performance of his official duties
6 or to reward him for official action he has taken.

7 An economic benefit tantamount to a gift includes,
8 without limitation, a loan at a rate of interest
9 substantially lower than the commercial rate then currently
10 prevalent for similar loans, and compensation received for
11 private services rendered at a rate substantially exceeding
12 the fair market value of such services. Campaign
13 contributions reported as required by statute are not gifts
14 or economic benefits tantamount to gifts.

15 (2) Disclose or use confidential information acquired
16 in the course of his official duties in order to further his
17 personal economic interests.

18 Section 5. Rules of conduct for legislators. Proof of
19 commission of any act enumerated in this section is proof
20 that the legislator committing the act has breached his
21 fiduciary duty under section [3 of this act]. A legislator
22 may not:

23 (1) Accept a fee, contingent fee, or any other
24 compensation, except his official compensation provided by
25 statute, for promoting or opposing the passage of

1 legislation.

2 (2) Seek other employment for himself or contract for
3 his services by the use or attempted use of his office.

4 Section 6. Rules of conduct for state officers and
5 state employees. Proof of commission of any act enumerated
6 in this section is proof that the actor has breached his
7 fiduciary duty. A state officer or a state employee, may
8 not:

9 (1) Use state time, facilities, or equipment for his
10 private business purposes.

11 (2) Engage in a substantial financial transaction for
12 his private business purposes with a person whom he inspects
13 or supervises in the course of his official duties.

14 (3) Perform an official act directly affecting a
15 business or other undertaking in which he either has a
16 substantial financial interest or is engaged as counsel,
17 consultant, representative, or agent. A department head or
18 a member of a quasi-judicial or rule-making board may
19 perform an official act notwithstanding this subsection if
20 his participation is necessary to the administration of a
21 statute and if he complies with the voluntary disclosure
22 procedures under section [10 of this act].

23 (4) Assist any person for a fee or other compensation
24 in obtaining a contract, claim, license, or other economic
25 benefit from his agency.

1 (5) Assist any person for a contingent fee in
2 obtaining a contract, claim, license, or other economic
3 benefit from any state agency.

4 Section 7. Rules of conduct for local government
5 officers and employees. Proof of commission of any act
6 enumerated in this section is proof that the actor has
7 breached his fiduciary duty. An officer or employee of
8 local government may not:

9 (1) Engage in a substantial financial transaction for
10 his private business purposes with a person whom he inspects
11 or supervises in the course of his official duties.

12 (2) Perform an official act directly affecting a
13 business or other undertaking in which he either has a
14 substantial financial interest or is engaged as counsel,
15 consultant, representative, or agent. A member of the
16 governing body of a local government may perform an official
17 act notwithstanding this section when his participation is
18 necessary to obtain a quorum or otherwise enable the body to
19 act, if he complies with the voluntary disclosure procedures
20 under section [10 of this act].

21 Section 8. Ethical principles for legislators. The
22 principles in this section are intended only as guides to
23 legislator conduct, and do not constitute violations as such
24 of the public trust of legislative office. (1) Where
25 feasible, and taking into account the fact that legislative

1 service is part-time, a legislator should avoid accepting or
2 retaining an economic benefit which presents a substantial
3 threat to his independence of judgment.

4 (2) When a legislator must take official action on a
5 legislative matter as to which he has a conflict situation
6 created by a personal, family, or client legislative
7 interest, he should consider eliminating the interest
8 creating the conflict or abstaining from the official
9 action. In making his decision, he should further consider:

10 (a) whether the conflict impedes his independence of
11 judgment;

12 (b) the effect of his participation on public
13 confidence in the integrity of the legislature; and

14 (c) whether his participation is likely to have any
15 significant effect on the disposition of the matter.

16 Section 9. Ethical principles for all public officers,
17 legislators, and employees. The principles in this section
18 are intended as guides to conduct and do not constitute
19 violations as such of the public trust of office or
20 employment in state or local government. However, failure
21 to observe one of these principles may be taken as evidence
22 tending to establish, in conjunction with all the other
23 facts of a case, a breach of fiduciary duty. (1) A public
24 officer (other than a legislator) or employee should not
25 acquire an interest in any business or undertaking which he

1 has reason to believe may be directly affected to its
2 economic benefit by official action to be taken by his
3 agency.

4 (2) A public officer, legislator, or employee should
5 not, within the twelve (12) months following the termination
6 of his office or employment, assist or represent any person
7 for a fee or other consideration, in connection with certain
8 matters with which he was directly involved during his term
9 or employment. These matters are legislation or rules which
10 he actively helped to formulate, and applications, claims,
11 or contested cases in the consideration of which he was an
12 active participant.

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14 not perform an official act directly affecting a business or
15 other undertaking to its economic detriment when he has a
16 substantial financial interest in a competing firm or
17 undertaking.

18 Section 10. Voluntary disclosure. A public officer,
19 legislator, or employee may, prior to acting in a manner
20 which may impinge on his fiduciary duty, disclose the nature
21 of his private interest which creates the conflict. He
22 shall make the disclosure to the enforcement authority,
23 listing the amount of his financial interest, if any, the
24 purpose and duration of his services rendered, if any, and
25 the compensation received for the services, or such other

1 information as is necessary to describe his interest. If he
2 then performs the official act involved, he shall state for
3 the record the fact and summary nature of the interest
4 disclosed at the time of performing the act.

5 Section 11. Powers of the enforcement authority. The
6 agency empowered to enforce this chapter, hereafter called
7 the enforcement authority, may:

8 (1) Issue and cause to be published advisory opinions,
9 with such deletions as may be necessary to protect the
10 identity of the requesting party, at the request of a public
11 officer, legislator, or employee contemplating an action
12 which may or may not be a breach of his fiduciary duty.

13 (2) Keep, and permit reasonable public access to,
14 voluntary disclosure statements.

15 (3) Make rules for the conduct of its affairs under
16 this chapter.

17 Section 12. Vesting of enforcement authority. If the
18 office of election commissioner is established by the
19 Forty-fourth Legislature, the election commissioner is the
20 enforcement authority under this chapter. If the office of
21 election commissioner is not established in 1975, the
22 enforcement authority is the board of personnel appeals.

23 Section 13. Section 94-7-401, R.C.M. 1947, is amended
24 to read as follows:

25 "94-7-401. Official misconduct. (1) A public servant

1 commits the offense of official misconduct when, in his
2 official capacity, he commits any of the following acts:

3 (a) purposely or negligently fails to perform any
4 mandatory duty as required by law or by a court of competent
5 jurisdiction; or

6 (b) knowingly performs an act in his official capacity
7 which he knows is forbidden by law; or

8 (c) with the purpose to obtain advantage for himself or
9 another, he performs an act in excess of his lawful
10 authority or in breach of the public trust of his office or
11 employment; or

12 (d) solicits or knowingly accepts for the performance
13 of any act a fee or reward which he knows is not authorized
14 by law.

15 (2) A public servant convicted of the offense of
16 official misconduct shall be fined not to exceed five
17 hundred dollars (\$500) or be imprisoned in the county jail
18 for a term not to exceed six (6) months, or both.

19 (3) The district court shall have exclusive
20 jurisdiction in prosecutions under this section, and any
21 action for official misconduct must be commenced by an
22 information filed after leave to file has been granted by
23 the district court or after a grand jury indictment has been
24 found.

25 (4) A public servant who has been charged as provided

1 in subsection (3) shall be suspended from his office without
2 pay pending final judgment. Upon final judgment of
3 conviction he shall permanently forfeit his office. Upon
4 acquittal he shall be reinstated in his office and shall
5 receive all back pay.

6 (5) This section does not affect any power conferred by
7 law to impeach or remove any public servant or any
8 proceeding authorized by law to carry into effect such
9 impeachment or removal."

-End-

1 *House* BILL NO. *196* *Mark Baker*
 2 INTRODUCED BY *Wayne Holmes*
 3 *and* *John*
 4 *Salvarson* *and* *Lockrem*
 5 *and* *Vincent*
 6 *and* *Lockrem*

BILL FOR AN ACT ENTITLED "AN ACT IMPLEMENTING ARTICLE
 SECTION 4 OF THE 1972 MONTANA CONSTITUTION TO PROVIDE
 A CODE OF ETHICS PROHIBITING CONFLICT BETWEEN PUBLIC DUTY
 AND PRIVATE INTEREST FOR LEGISLATORS AND ALL STATE AND LOCAL
 OFFICERS AND EMPLOYEES; AMENDING SECTION 94-7-401, R.C.M.
 1947.

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

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a sole proprietorship, a trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

(2) "Compensation" means any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.

(3) "Employee" means any temporary or permanent employee of the state or any subdivision thereof, including members of boards, commissions, and committees, and employees under contract to the state, but excluding legislators and all judicial officers.

(4) "Financial interest" means an interest held by an individual, his spouse, or minor children which is:

- (a) an ownership interest in a business;
- (b) a creditor interest in an insolvent business;
- (c) an employment, or prospective employment for which negotiations have begun;
- (d) an ownership interest in real or personal property;
- (e) a loan or other debtor interest;
- (f) a directorship or officership in a business.

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1 discretionary authority.

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3 elected officer of any subdivision of the state excluding
4 legislators, and the judiciary.

5 (7) "State agency" includes the state, the legislature
6 and its committees, all executive departments, boards,
7 commissions, committees, bureaus, offices, the university
8 system and all independent commissions and other
9 establishments of the state government, but excluding the
10 courts.

11 (8) "State officer" includes all elected officers and
12 directors of the executive branch of state government as
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15 office or employment is a public trust, created by the
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17 public officers, legislators, and employees.

18 A public officer, legislator or employee shall carry
19 out his duties for the benefit of the people of the state.
20 He may not use his office, the influence created by his
21 official position, or the inside information gained by
22 virtue of that position, to advance any of his own, his
23 relative's, or his associate's personal economic interests,
24 other than advancing such strictly incidental benefits as
25 may accrue to any of them from the enactment or

1 administration of laws affecting the public generally.

2 (2) A public officer, legislator or employee whose
3 conduct departs from his fiduciary duty under this section
4 is liable to the people of the state as a trustee of
5 property is liable to the beneficiary under section 86-310,
6 and shall suffer such other liabilities as a private
7 fiduciary would suffer for abuse of his trust. The county
8 attorney of the county where the trust is violated may bring
9 appropriate judicial proceedings on behalf of the people.
10 Any accounting collected in such actions shall be paid to
11 the general fund of the county.

12 (3) This section sets forth the fundamental standard
13 of conduct for all public officers, legislators, and
14 employees. The following sections set forth various rules
15 of conduct, the transgression of any of which is, as such, a
16 violation of this standard, and various ethical principles,
17 the transgression of which may, in some cases, contribute to
18 a violation of this standard. The enumeration of prohibited
19 acts and cautioned acts does not exculpate an act not thus
20 enumerated if that act amounts to a breach of fiduciary
21 duty.

22 Section 4. Rules of conduct for all public officers,
23 legislators, and employees. Proof of commission of any act
24 enumerated in this section is proof that the actor has
25 breached his fiduciary duty. A public officer, legislator

1 or employee may not:

2 (1) Accept a gift, or accept an economic benefit
3 tantamount to a gift, under circumstances from which it can
4 reasonably be inferred that a major purpose of the gift is
5 to influence him in the performance of his official duties
6 or to reward him for official action he has taken.

7 An economic benefit tantamount to a gift includes,
8 without limitation, a loan at a rate of interest
9 substantially lower than the commercial rate then currently
10 prevalent for similar loans, and compensation received for
11 private services rendered at a rate substantially exceeding
12 the fair market value of such services. Campaign
13 contributions reported as required by statute are not gifts
14 or economic benefits tantamount to gifts.

15 (2) Disclose or use confidential information acquired
16 in the course of his official duties in order to further his
17 personal economic interests.

18 Section 5. Rules of conduct for legislators. Proof of
19 commission of any act enumerated in this section is proof
20 that the legislator committing the act has breached his
21 fiduciary duty under section [3 of this act]. A legislator
22 may not:

23 (1) Accept a fee, contingent fee, or any other
24 compensation, except his official compensation provided by
25 statute, for promoting or opposing the passage of

1 legislation.

2 (2) Seek other employment for himself or contract for
3 his services by the use or attempted use of his office.

4 Section 6. Rules of conduct for state officers and
5 state employees. Proof of commission of any act enumerated
6 in this section is proof that the actor has breached his
7 fiduciary duty. A state officer or a state employee, may
8 not:

9 (1) Use state time, facilities, or equipment for his
10 private business purposes.

11 (2) Engage in a substantial financial transaction for
12 his private business purposes with a person whom he inspects
13 or supervises in the course of his official duties.

14 (3) Perform an official act directly affecting a
15 business or other undertaking in which he either has a
16 substantial financial interest or is engaged as counsel,
17 consultant, representative, or agent. A department head or
18 a member of a quasi-judicial or rule-making board may
19 perform an official act notwithstanding this subsection if
20 his participation is necessary to the administration of a
21 statute and if he complies with the voluntary disclosure
22 procedures under section [10 of this act].

23 (4) Assist any person for a fee or other compensation
24 in obtaining a contract, claim, license, or other economic
25 benefit from his agency.

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1 (5) Assist any person for a contingent fee in
2 obtaining a contract, claim, license, or other economic
3 benefit from any state agency.

4 Section 7. Rules of conduct for local government
5 officers and employees. Proof of commission of any act
6 enumerated in this section is proof that the actor has
7 breached his fiduciary duty. An officer or employee of
8 local government may not:

9 (1) Engage in a substantial financial transaction for
10 his private business purposes with a person whom he inspects
11 or supervises in the course of his official duties.

12 (2) Perform an official act directly affecting a
13 business or other undertaking in which he either has a
14 substantial financial interest or is engaged as counsel,
15 consultant, representative, or agent. A member of the
16 governing body of a local government may perform an official
17 act notwithstanding this section when his participation is
18 necessary to obtain a quorum or otherwise enable the body to
19 act, if he complies with the voluntary disclosure procedures
20 under section [10 of this act].

21 Section 8. Ethical principles for legislators. The
22 principles in this section are intended only as guides to
23 legislator conduct, and do not constitute violations as such
24 of the public trust of legislative office. (1) Where
25 feasible, and taking into account the fact that legislative

1 service is part-time, a legislator should avoid accepting or
2 retaining an economic benefit which presents a substantial
3 threat to his independence of judgment.

4 (2) When a legislator must take official action on a
5 legislative matter as to which he has a conflict situation
6 created by a personal, family, or client legislative
7 interest, he should consider eliminating the interest
8 creating the conflict or abstaining from the official
9 action. In making his decision, he should further consider:

10 (a) whether the conflict impedes his independence of
11 judgment;

12 (b) the effect of his participation on public
13 confidence in the integrity of the legislature; and

14 (c) whether his participation is likely to have any
15 significant effect on the disposition of the matter.

16 Section 9. Ethical principles for all public officers,
17 legislators, and employees. The principles in this section
18 are intended as guides to conduct and do not constitute
19 violations as such of the public trust of office or
20 employment in state or local government. However, failure
21 to observe one of these principles may be taken as evidence
22 tending to establish, in conjunction with all the other
23 facts of a case, a breach of fiduciary duty. (1) A public
24 officer (other than a legislator) or employee should not
25 acquire an interest in any business or undertaking which he

1 has reason to believe may be directly affected to its
2 economic benefit by official action to be taken by his
3 agency.

4 (2) A public officer, legislator, or employee should
5 not, within the twelve (12) months following the termination
6 of his office or employment, assist or represent any person
7 for a fee or other consideration, in connection with certain
8 matters with which he was directly involved during his term
9 or employment. These matters are legislation or rules which
10 he actively helped to formulate, and applications, claims,
11 or contested cases in the consideration of which he was an
12 active participant.

13 (3) A public officer, legislator, or employee should
14 not perform an official act directly affecting a business or
15 other undertaking to its economic detriment when he has a
16 substantial financial interest in a competing firm or
17 undertaking.

18 Section 10. Voluntary disclosure. A public officer,
19 legislator, or employee may, prior to acting in a manner
20 which may impinge on his fiduciary duty, disclose the nature
21 of his private interest which creates the conflict. He
22 shall make the disclosure to the enforcement authority,
23 listing the amount of his financial interest, if any, the
24 purpose and duration of his services rendered, if any, and
25 the compensation received for the services, or such other

1 information as is necessary to describe his interest. If he
2 then performs the official act involved, he shall state for
3 the record the fact and summary nature of the interest
4 disclosed at the time of performing the act.

5 Section 11. Powers of the enforcement authority. The
6 agency empowered to enforce this chapter, hereafter called
7 the enforcement authority, may:

8 (1) Issue and cause to be published advisory opinions,
9 with such deletions as may be necessary to protect the
10 identity of the requesting party, at the request of a public
11 officer, legislator, or employee contemplating an action
12 which may or may not be a breach of his fiduciary duty.

13 (2) Keep, and permit reasonable public access to,
14 voluntary disclosure statements.

15 (3) Make rules for the conduct of its affairs under
16 this chapter.

17 Section 12. Vesting of enforcement authority. If the
18 office of election commissioner is established by the
19 Forty-fourth Legislature, the election commissioner is the
20 enforcement authority under this chapter. If the office of
21 election commissioner is not established in 1975, the
22 enforcement authority is the board of personnel appeals.

23 Section 13. Section 94-7-401, R.C.M. 1947, is amended
24 to read as follows:

25 "94-7-401. Official misconduct. (1) A public servant

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1 commits the offense of official misconduct when, in his
2 official capacity, he commits any of the following acts:

3 (a) purposely or negligently fails to perform any
4 mandatory duty as required by law or by a court of competent
5 jurisdiction; or

6 (b) knowingly performs an act in his official capacity
7 which he knows is forbidden by law; or

8 (c) with the purpose to obtain advantage for himself or
9 another, he performs an act in excess of his lawful
10 authority or in breach of the public trust of his office or
11 employment; or

12 (d) solicits or knowingly accepts for the performance
13 of any act a fee or reward which he knows is not authorized
14 by law.

15 (2) A public servant convicted of the offense of
16 official misconduct shall be fined not to exceed five
17 hundred dollars (\$500) or be imprisoned in the county jail
18 for a term not to exceed six (6) months, or both.

19 (3) The district court shall have exclusive
20 jurisdiction in prosecutions under this section, and any
21 action for official misconduct must be commenced by an
22 information filed after leave to file has been granted by
23 the district court or after a grand jury indictment has been
24 found.

25 (4) A public servant who has been charged as provided

1 in subsection (3) shall be suspended from his office without
2 pay pending final judgment. Upon final judgment of
3 conviction he shall permanently forfeit his office. Upon
4 acquittal he shall be reinstated in his office and shall
5 receive all back pay.

6 (5) This section does not affect any power conferred by
7 law to impeach or remove any public servant or any
8 proceeding authorized by law to carry into effect such
9 impeachment or removal."

-End-

March 25, 1975

SENATE COMMITTEE ON JUDICIARY

AMENDMENTS TO HOUSE BILL NO. 196

That House Bill No. 196, third reading, be amended as follows:

1. Amend page 9, section 9, line 4.
Following: "officer"
Strike: ", legislator,"
2. Amend page 9, section 9, line 5.
Following: "following the"
Insert: "voluntary"
3. Amend page 9, section 9, lines 6 and 7.
Following: "employment,"
Strike: "assist or represent any person for a fee or other
consideration, in connection with certain"
Insert: "obtain employment in which he will take direct
advantage, unavailable to others, of"
4. Amend page 9, section 9, line 9.
Following: "are"
Strike: "legislation or"
5. Amend page 9, section 9, line 9.
Following: "rules"
Insert: "other than laws or rules of general application"