

1 *Spencer* BILL NO. *402*  
 2 INTRODUCED BY *Spencer F. Allen, Pleasant Holmes, Palmer, [unclear], [unclear], [unclear]*  
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 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION  
 5 94-7-401, R.C.M. 1947, TO INCLUDE IN THE DEFINITION OF  
 6 OFFICIAL MISCONDUCT THE ACT OF INDUCING A PERSON TO COMMIT A  
 7 CRIMINAL ACT, AND TO AMEND SECTION 94-3-111, R.C.M. 1947, TO  
 8 FURTHER DEFINE ENTRAPMENT."

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

11 Section 1. Section 94-7-401, R.C.M. 1947, is amended  
12 to read as follows:

13 "94-7-401. Official misconduct. (1) A public servant  
14 commits the offense of official misconduct when, in his  
15 official capacity, he commits any of the following acts:

16 (a) purposely or negligently fails to perform any  
17 mandatory duty as required by law or by a court of competent  
18 jurisdiction; or

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

21 (c) with the purpose to obtain advantage for himself  
22 or another, he performs an act in excess of his lawful  
23 authority; or

24 (d) solicits or knowingly accepts for the performance  
25 of any act a fee or reward which he knows is not authorized

1 by law.  
 2 (e) induces any person to commit an act not  
 3 contemplated by that person for the purpose of instituting a  
 4 criminal action against him. A public servant who induces  
 5 someone to commit an illegal act for which he or she later  
 6 presses charges shall be considered to have made a  
 7 misleading, fraudulent, or deceptive representation.

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

12 (3) The district court shall have exclusive  
13 jurisdiction in prosecutions under this section, and any  
14 action for official misconduct must be commenced by an  
15 information filed after leave to file has been granted by  
16 the district court or after a grand jury indictment has been  
17 found.

18 (4) A public servant who has been charged as provided  
19 in subsection (3) shall be suspended from his office without  
20 pay pending final judgment. Upon final judgment of  
21 conviction he shall permanently forfeit his office. Upon  
22 acquittal he shall be reinstated in his office and shall  
23 receive all back pay.

24 (5) This section does not affect any power conferred by  
25 law to impeach or remove any public servant or any

1 proceeding authorized by law to carry into effect such  
2 impeachment or removal."

3 Section 2. Section 94-3-111, R.C.M. 1947, is amended  
4 to read as follows:

5 "94-3-111. Entrapment. A person is not guilty of an  
6 offense if his conduct is incited or induced by a public  
7 servant, or his agent for the purpose of obtaining evidence  
8 for the prosecution of such person. However, this section is  
9 inapplicable if a public servant or his agent, merely  
10 affords to such person the opportunity or facility for  
11 committing an offense in furtherance of criminal purpose  
12 which such person has originated. Any person who is  
13 initially arrested or apprehended as a result of misleading,  
14 deceptive, or fraudulent representations on the part of any  
15 officer or any person working for or on behalf of any law  
16 enforcement agency, cannot be convicted of any offense that  
17 results from said representations."

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