

1 Zause BILL NO. 421  
 2 INTRODUCED BY Richard Rasmussen  
 3 Barbara

4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS  
 5 11-3283, 16-3705, 23-4724, 26-109, AND 31-105, R.C.M. 1947,  
 6 TO ALLOW PUBLIC OFFICERS AND EMPLOYEES TO PARTICIPATE IN  
 7 ELECTION CAMPAIGNS AND TO PROTECT THEM FROM UNDUE EMPLOYER  
 8 INFLUENCE; PROVIDING FOR NOTICE OF THE PROVISIONS OF THIS  
 9 ACT; PROVIDING PENALTIES; AND REPEALING SECTION 23-4739,  
 10 R.C.M. 1947."

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

12 Section 1. Section 11-3283, R.C.M. 1947, is amended to  
 13 read as follows:

14 "11-3283. Persons in classified service not affected  
 15 by political or religious opinions or race, ~~---political~~  
 16 ~~contributions--and--activity--forbidden.~~ No person in the  
 17 classified service or seeking admission thereto shall be  
 18 appointed, reduced or removed, or in any way favored or  
 19 discriminated against because of political opinions or  
 20 affiliations, or because of race, color, or religious  
 21 beliefs. ~~No officer or employee of the--municipality--shall~~  
 22 ~~directly--or--indirectly--solicit--or--receive,--or--be--in--any~~  
 23 ~~manner--concerned--in--soliciting--or--receiving,--any~~  
 24 ~~assessments, subscription, or contribution for any political~~  
 25

1 ~~party--or--political--purpose--whatever,--No person holding a~~  
 2 ~~position in the classified service shall take any part in~~  
 3 ~~political management or affairs or in political campaigns,~~  
 4 ~~further than to cast his vote or to express privately his~~  
 5 ~~opinion."~~

6 Section 2. Section 16-3705, R.C.M. 1947, is amended to  
 7 read as follows:

8 "16-3705. Qualifications of deputy sheriffs, marshals  
 9 and policemen. (1) No sheriff of a county, mayor of a city,  
 10 or other persons authorized by law to appoint special  
 11 deputies, marshals, or policemen in this state to preserve  
 12 the public peace and prevent or quell public disturbance,  
 13 shall hereafter appoint as such special deputies, marshals,  
 14 or policemen any person who shall not have resided  
 15 continuously in this state for a period of one year at  
 16 least, and in the county where such appointment is made for  
 17 the period of at least six (6) months prior to the date of  
 18 said appointment, and who does not meet the minimum  
 19 qualifying standards for employment promulgated by the board  
 20 of crime control; provided, that the provisions of this  
 21 section shall not apply in cases of such officers summoning  
 22 a posse forthwith to quell public disturbance or domestic  
 23 violence. And provided further, that the person or body  
 24 authorized by law to appoint special deputies, marshals, or  
 25 policemen may, in its discretion, waive residency

1 requirements.

2 (2) No sheriff shall employ as a deputy any individual  
3 who does not possess all the following qualifications:

4 (a) graduate of an accredited high school or the  
5 equivalent thereof;

6 (b) good moral character;

7 (c) never been convicted of a felony;

8 (d) has not within five (5) years immediately  
9 preceding his date of employment been affiliated in any  
10 manner with a subversive organization;

11 (e) been examined by a physician licensed to practice  
12 in the state of Montana within thirty (30) days immediately  
13 preceding his date of employment and has been pronounced in  
14 good physical condition.

15 Subsection (2) of this section shall not be applicable  
16 to any deputy sheriff whose term of employment commenced  
17 prior to the effective date of this act.

18 (3) Any person whose term of employment as a deputy  
19 sheriff commences subsequent to the effective date of this  
20 act shall serve a one-year probationary period and that  
21 during this one-year period the employment of any such  
22 deputy may be terminated by the sheriff with or without  
23 cause and without recourse to the sheriff under the terms of  
24 this act.

25 (4) It shall be the duty of the sheriff to cause all

1 deputies whose term of employment commenced subsequent to  
2 the effective date of this act to attend that academy  
3 provided for by chapter 52, Title 75, R.C.M. 1947, except  
4 that the sheriff may accept reasonable delays in attendance  
5 at the academy as shown by the deputy's declared intention  
6 of attending. Failure to satisfactorily complete the course  
7 offered by said academy shall be deemed cause to terminate a  
8 deputy's employment.

9 (5) Any deputy sheriff now employed or that may  
10 hereafter be employed shall continue in service until  
11 relieved of his employment in the manner hereinafter  
12 provided and only for one or more of the following specified  
13 causes:

14 (a) conviction of a felony subsequent to the  
15 commencement of such employment;

16 (b) willful disobedience of an order or orders given  
17 by the sheriff;

18 (c) drinking intoxicating liquor while in uniform or  
19 while on official duty or being intoxicated in a public  
20 place while in uniform or while on official duty;

21 (d) sleeping while on duty;

22 (e) incapacity materially affecting ability to perform  
23 official duties;

24 (f) gross inefficiency in the performance of official  
25 duties;

~~(g) participation in any political campaign as a candidate or the solicitation of political support for any candidate for public office.~~

(6) When a sheriff terminates the employment of a deputy he shall at the time of termination cause to be served upon said deputy a statement in writing subscribed and sworn to by the sheriff setting forth the cause or causes for the discharge or termination of the deputy's employment.

(7) Any deputy sheriff whose employment is terminated from and after the effective date of this act, may within thirty (30) days from the date of the termination of his employment make application to the district court of the county wherein the deputy was employed for a hearing before the court, with or without jury, on the charges resulting in the deputy's termination of employment or discharge. In the event that a deputy prevails at the hearing he shall be entitled to be reinstated as a deputy sheriff at the same salary he received prior to his discharge or termination of employment and he shall also be entitled to any rights that might have accrued to his benefit prior to his discharge or termination of employment, including that salary which he would have received but for the termination."

Section 3. Section 23-4724, R.C.M. 1947, is amended to read as follows:

"23-4724. Unlawful acts of employers. It shall be unlawful for any employer, in paying his employees the salary or wages due them, to enclose their pay in "pay envelopes" upon which there is written or printed the name of any candidate or political mottoes, devices, or arguments containing threats or promises, express or implied, calculated or intended to influence the political opinions or actions of such employees. Nor shall it be lawful for an employer, within ninety days of an election, to put up or otherwise exhibit in his factory, workshop, or other establishment or place where his workmen or employees may be working, any handbill or placard or make any verbal statement containing any threat or promise, notice, or information, that in case any particular ticket or political party, or organization, or candidate, shall be elected, work in his place or establishment will cease, in whole or in part, or shall be continued or increased, or his place or establishment be closed up, or the salaries or wages of his workmen or employees be reduced or increased, or other threats, or promises, express or implied, intended or calculated to influence the political opinions or actions of his workmen or employees. This section shall apply to corporations, as well as individuals, and public officers and employees. any Any person violating the provisions of this section is guilty of a misdemeanor, and shall be

1 punished by a fine of not less than twenty-five dollars nor  
 2 more than five hundred dollars, and imprisonment not  
 3 exceeding six months in the county jail, and any corporation  
 4 violating this section shall be punished by fine not to  
 5 exceed five thousand dollars, or forfeit its charter, or  
 6 both such fine and forfeiture."

7 Section 4. Section 26-109, R.C.M. 1947, is amended to  
 8 read as follows:

9 "26-109. Political activity prohibited. While  
 10 retaining the right to vote as he may please, and to express  
 11 his opinions on all political questions, no employee of the  
 12 fish and game commission ~~shall--take--any--active--part--in~~  
 13 ~~political--management--or--political--campaigns,--nor--shall--he~~  
 14 may use his official authority or influence for the purpose  
 15 of interfering with an election, or affecting the results,  
 16 thereof, or for the purpose of coercing or influencing the  
 17 political actions of any person or body."

18 Section 5. Section 31-105, R.C.M. 1947, is amended to  
 19 read as follows:

20 "31-105. Appointment and promotion of officers --  
 21 replacements and additions -- reserve patrolmen -- salaries  
 22 -- qualifications -- probationary training -- tenure --  
 23 disciplinary action -- hearing -- appeal. (1) Appointments  
 24 and promotions. (a) The board shall designate captains,  
 25 lieutenants, sergeants, and patrolmen in such numbers as the

1 board may deem necessary, but within the limits of the  
 2 legislative appropriation made available for such purposes.

3 (b) Replacements and additions to the highway patrol  
 4 force shall be chosen in equal numbers from the twelve (12)  
 5 highway districts, provided however, that if sufficient  
 6 qualified applications are not received from any one  
 7 district that the board may in its discretion substitute  
 8 other qualified applicants from any other districts.

9 (c) Patrolmen filling vacancies caused by the  
 10 incumbents' entrance into the armed forces of the United  
 11 States, shall on the return of the incumbents be placed in  
 12 the patrol reserve, without pay; otherwise they shall hold  
 13 their probationary or permanent appointments while there are  
 14 sufficient operating funds. Reserve patrolmen shall then be  
 15 used for future replacements in the permanent patrol.

16 (d) Captains, lieutenants and sergeants shall be  
 17 selected from the patrolmen by the chief, subject to the  
 18 approval of the highway patrol board. The duties and  
 19 jurisdiction of the captains, lieutenants and sergeants  
 20 shall be outlined, defined and under the control of the  
 21 chief subject to the approval of the Montana highway patrol  
 22 board.

23 (2) Salaries. (a) The Montana highway patrol board  
 24 shall, within the limits of appropriations made available  
 25 for such purpose, prepare a schedule of compensation and

1 expenses which shall be uniform within all grades and submit  
2 it to the state board of examiners for their approval.

3 (b) The base salary of the captains, lieutenants,  
4 sergeants and patrolmen shall be fixed by the board, with  
5 the approval of the state board of examiners. In the event  
6 that a probationary patrolman is appointed permanently, he  
7 shall, at the time of such appointment, receive the base  
8 salary of patrolmen. These salaries shall be increased one  
9 per cent (1%) per year for each additional year of service.

10 (3) Qualifications. (a) Patrolmen shall possess the  
11 following qualifications:

12 (i) Sound and active physical and mental condition.

13 (ii) Good moral character.

14 (iii) Resident of Montana for at least one (1) year  
15 immediately prior to appointment.

16 (iv) Pass a satisfactory test in the operation of  
17 automobiles.

18 (v) Citizens of the United States and state of  
19 Montana.

20 (4) Probationary training. (a) All new patrolmen shall  
21 be placed under probationary training and service for a  
22 period of six (6) months to one (1) year, during which time  
23 the highway patrol chief must recommend to the highway  
24 patrol board for permanent appointments; otherwise the  
25 probationary patrolmen will automatically be discharged.

1 (b) All newly appointed captains, lieutenants and  
2 sergeants shall be placed under probationary training and  
3 service for a period of six (6) months to one (1) year,  
4 during which time the highway patrol chief must recommend to  
5 the highway patrol board for permanent appointments;  
6 otherwise the captains, lieutenants and sergeants will  
7 automatically revert to their previous ranks without  
8 prejudice.

9 (5) Tenure of office. Every person employed or  
10 appointed and designated as a chief, captain, lieutenant,  
11 sergeant, or patrolman under and pursuant to the provisions  
12 of this act, except as provided in subsection (4) above,  
13 shall continue in service and hold his position without  
14 demotion until suspended, demoted, or discharged in the  
15 manner hereinafter provided, for one (1) or more of the  
16 causes specified in the following subsection.

17 (6) Suspension, demotion or discharge. Cause for  
18 suspension, demotion or discharge will be:

19 (a) Conviction of any crime involving moral turpitude  
20 in any court of competent jurisdiction subsequent to the  
21 commencement of such employment.

22 (b) Gross neglect of duty or willful violation or  
23 disobedience of orders or regulations.

24 (c) Loitering about or entering places of ill fame,  
25 ill repute, or where gambling is known to be conducted or to

1 be in progress, except in the immediate discharge of duty.

2 (d) Conduct unbecoming an officer.

3 (e) Drinking intoxicating liquor while using  
4 state-owned cars or in uniform, or being intoxicated in a  
5 public place.

6 (f) Sleeping while on duty.

7 (g) Incapacity, or partial incapacity, materially  
8 affecting his ability to perform his official duties.

9 (h) Gross inefficiency in performing duties.

10 ~~{i}--Active-participation-in-any-political-campaign-by~~  
11 ~~supporting---or---opposing,---directly---or---indirectly,---any~~  
12 ~~political---candidate,---or---contributing---financially---or~~  
13 ~~otherwise,---directly-or-indirectly,-to-the-success-or-defeat~~  
14 ~~of-any-political-party-or-candidate~~

15 {j} (i) Willful disobedience of rules and regulations  
16 adopted by the board, governing the conduct and discipline  
17 of members of the patrol.

18 (7) Method of preferring charges. (a) The charge or  
19 charges against any patrolman shall be made in writing and  
20 shall be signed and sworn to by the person making the charge  
21 or charges.

22 (b) The written charge or charges shall be filed with  
23 the chief of the Montana highway patrol.

24 (c) Any charge or charges which could result in the  
25 suspension or discharge of the chief or a captain shall be

1 filed directly with the highway patrol board.

2 (d) When charges are filed and the chief believes that  
3 such charge or charges constitute grounds for suspension,  
4 demotion or discharge, he shall order a hearing to be had  
5 thereon before the highway patrol board and fix a time for  
6 such hearing.

7 (e) When charges are filed and the chief believes such  
8 charge or charges do not constitute grounds for suspension,  
9 demotion or discharge he shall dismiss such charges.

10 (f) The highway patrol board shall have the authority  
11 to order the chief to file charges with the board when the  
12 chief in his judgment does not believe the charge or charges  
13 warrant a hearing.

14 (8) Authority to suspend, demote or discharge. (a)  
15 When the highway patrol chief has cause to believe that any  
16 member of the highway patrol has violated any of the  
17 hereinabove grounds for suspension, demotion or discharge,  
18 or his conduct has warranted reprimanding, he may, with the  
19 approval of the Montana highway patrol board, suspend,  
20 demote or reprimand the member.

21 (b) If the chief orders a hearing he may suspend such  
22 patrolman pending the rendition of the decision made in such  
23 case.

24 (9) Length of suspension--demotion pay status. (a) Any  
25 member under suspension shall be on leave without pay and

1 for a period not to exceed thirty (30) days in time.

2 (b) In cases of disciplinary action resulting in  
3 demotion, the member shall receive the pay of the rank to  
4 which he is demoted.

5 (10) Notification of hearing. (a) The chief shall, at  
6 least ten (10) days before the time appointed for a hearing,  
7 serve written notice specifying the charge or charges filed  
8 and stating the name of the person or persons making the  
9 charge or charges, on the accused patrolman personally, if  
10 his whereabouts is known, in the state of Montana.

11 (b) If at the time, the whereabouts of the accused  
12 patrolman is unknown, or if he be outside of the state of  
13 Montana, service may be made upon him by mailing the written  
14 notice to him at his last known place of residence in  
15 Montana.

16 (11) Hearing. (a) The highway patrol board shall be the  
17 authority to hear such charge or charges and render a  
18 decision and appropriate order.

19 (b) The highway patrol board shall have the power to  
20 compel the attendance of witnesses at any such hearing and  
21 to examine them under oath and to require the production of  
22 books, papers, and other evidence at such hearing and for  
23 that purpose issue subpoenas and cause the same to be served  
24 and executed in any part of the state.

25 (c) The accused patrolman shall be entitled to be

1 confronted with the witnesses against him and have an  
2 opportunity to cross-examine the same and to introduce at  
3 such hearing testimony in his own behalf and shall be  
4 entitled to be represented by counsel at such hearing.

5 (d) The highway patrol board shall within fifteen (15)  
6 days after such hearing render its decision in writing and  
7 file same in its office with the chief and with the  
8 patrolman accused also.

9 (12) Disciplinary action. (a) If, after a hearing, the  
10 highway patrol board finds that any such charge or charges,  
11 made against the patrolman be true, it may punish the  
12 offending party by reprimand, suspension without pay,  
13 demotion, or discharge.

14 (b) If after the hearing, the highway patrol board  
15 finds that the charge or charges made against the patrolman  
16 not be true, the board shall reinstate the accused patrolman  
17 to his position and rank and shall order the payment of any  
18 salary withheld pending the determination of the charge or  
19 charges.

20 (13) Right to appeal. (a) Any patrolman who is  
21 suspended, demoted, or discharged may have a right of appeal  
22 to the district court of Lewis and Clark county.

23 (b) Such appeal must be made within ten (10) days  
24 after such decision or determination of the highway patrol  
25 board.

1 (c) The district court shall review such decision or  
2 determination in a summary manner and shall render its  
3 decision upon such appeal within ninety (90) days from the  
4 filing of such appeal in said court.

5 (d) If the decision or determination of the highway  
6 patrol board shall be finally reversed or modified by the  
7 district court, the accused patrolman shall be reinstated in  
8 his position and the highway patrol board shall pay to the  
9 said patrolman any salary or wages withheld from him pending  
10 the determination of the charge or charges, or as may be  
11 directed by the court."

12 Section 6. There is a new R.C.M. section that reads as  
13 follows:

14 Public employees prohibited from campaigning during  
15 working hours -- penalty. (1) No public employee may  
16 solicit money, influence, service, or any other thing of  
17 value or otherwise aid or promote any political committee,  
18 issue to be voted on by the people, or the nomination or  
19 election of any person to public office while on the job  
20 during working hours.

21 (2) A person convicted of violating the provisions of  
22 subsection (1) of this section shall be fined not to exceed  
23 five hundred dollars (\$500).

24 (3) Nothing contained in this section restricts the  
25 right of a public employee to express his personal political

1 views while not on the job during working hours.

2 Section 7. There is a new R.C.M. section that reads as  
3 follows:

4 Coercion of public employees prohibited -- penalty.  
5 (1) No person may attempt to coerce, command, or require a  
6 public employee to influence or give money, service or other  
7 thing of value to aid or promote any political committee,  
8 issue to be voted on by the people, or to aid to promote the  
9 nomination or election of any person to public office.

10 (2) A person convicted of violating this section is  
11 guilty of a felony and shall be fined not less than five  
12 hundred dollars (\$500) and not to exceed five thousand  
13 dollars (\$5,000) or imprisoned not less than six (6) months  
14 and not to exceed five (5) years or both.

15 Section 8. There is a new R.C.M. section that reads as  
16 follows:

17 Department of administration to provide notice of act.  
18 The department of administration shall provide notice to all  
19 officers and employees affected by this act of privileges  
20 and responsibilities under this act. A copy of the notice  
21 shall be posted conspicuously in all public offices in the  
22 state.

23 Section 9. Section 23-4739, R.C.M. 1947, is repealed.

-End-