

HOUSE BILL 641

IN THE HOUSE

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| February 8, 1979 | Introduced and referred to Committee on Judiciary. |
| February 14, 1979 | Committee recommend bill, do not pass. |
| February 15, 1979 | Report adopted. |

Volkman
McBride
Keedy
Metcalfe
Greenhouse
BURNETT
Norman
Valdron
F.A.A.
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House BILL NO. 641 *Clay Holmes*
 INTRODUCED BY *Reichert* *Bennett* *Ed Smith* *Hammis*
Rosenthal *Dassinger* *VINCENT* *Wendroff* *Yardley* *Blusman*
 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE MONTANA'S
 CODE OF ETHICS BY IMPROVING ENFORCEMENT AND PROVIDING
 PENALTIES; PROHIBITING A FORMER STATE EMPLOYEE FROM
 CONTRACTING OR BEING EMPLOYED BY A CONTRACTOR WITH THE STATE
 FOR 6 MONTHS FOLLOWING TERMINATION OF EMPLOYMENT; REMOVING
 EXEMPTIONS FOR PROFESSIONAL SERVICE CONTRACTS; AMENDING
 SECTIONS 2-2-103 THROUGH 2-2-105, 2-2-112, 2-2-201, AND
 45-7-401, MCA."

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1 administration of laws affecting the public generally.
 2 (2) A public officer, legislator, or employee whose
 3 conduct departs from his fiduciary duty is liable to the
 4 people of the state as a trustee of property, is liable to a
 5 beneficiary under 72-20-203(2), and shall suffer such other
 6 liabilities as a private fiduciary would suffer for abuse of
 7 his trust. The county attorney of the county where the trust
 8 is violated may bring appropriate judicial proceedings on
 9 behalf of the people. Any moneys collected in such actions
 10 shall be paid to the general fund of the aggrieved agency.
 11 (3) The following sections set forth various rules of
 12 conduct, the transgression of any of which is, as such, a
 13 violation of fiduciary duty, and various ethical principles:
 14 the transgression of any of which is not, as such, a
 15 violation of fiduciary duty."
 16 Section 2. Section 2-2-104, MCA, is amended to read:
 17 "2-2-104. Rules of conduct for all public officers,
 18 legislators, and employees. (1) Proof of commission of any
 19 act enumerated in this section is proof that the actor has
 20 breached his fiduciary duty. A public officer, legislator,
 21 or employee may not:
 22 (a) disclose or use confidential information acquired
 23 in the course of his official duties in order to further
 24 substantially his personal economic interests; or
 25 (b) accept a gift of substantial value or a

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1 substantial economic benefit tantamount to a gift:

2 (i) which would tend improperly to influence a
3 reasonable person in his position to depart from the
4 faithful and impartial discharge of his public duties; or

5 (ii) which he knows or which a reasonable person in his
6 position should know under the circumstances is primarily
7 for the purpose of rewarding him for official action he has
8 taken.

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

17 Section 3. Section 2-2-105, MCA, is amended to read:

18 "2-2-105. Ethical principles for public officers and
19 employees. (1) The principles in this section are intended
20 as guides to conduct and do not constitute violations as
21 such of the public trust of office or employment in state or
22 local government. However, failure to observe one of these
23 principles may be taken as evidence tending to establish, in
24 conjunction with all the other facts of a case, a breach of
25 fiduciary duty.

1 (2) A public officer or employee should not acquire an
2 interest in any business or undertaking which he has reason
3 to believe may be directly ~~and-substantially~~ affected to its
4 economic benefit by official action to be taken by his
5 agency.

6 (3) A public officer or employee should not, within
7 the months following the voluntary termination of his office
8 or employment, obtain employment in which he will take
9 direct advantage, unavailable to others, of matters with
10 which he was directly involved during his term or
11 employment. These matters are rules, other than rules of
12 general application, which he actively helped to formulate
13 and applications, claims, or contested cases in the
14 consideration of which he was an active participant.

15 (4) A public officer or employee should not perform an
16 official act directly ~~and-substantially~~ affecting a business
17 or other undertaking to its economic detriment when he has a
18 substantial financial interest in a competing firm or
19 undertaking."

20 Section 4. Section 2-2-112, MCA, is amended to read:

21 "2-2-112. Ethical principles for legislators. (1) 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.

25 (2) Whenever feasible, and taking into account the

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

5 ~~{2}{3}~~ When a legislator must take official action on
 6 a legislative matter as to which he has a conflict created
 7 by a personal, family, clients, or financial interest which
 8 would be directly and substantially affected by the
 9 legislative matter, he should consider ~~disclosing~~---or
 10 eliminating the interest creating the conflict or abstaining
 11 from the official action. In making his decision, he should
 12 further consider:

13 (a) whether the conflict impedes ~~his~~ the independence
 14 of his judgment;

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

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

19 ~~{3}{4}~~ A conflict situation may arise from legislation
 20 affecting less than the entire statewide membership of a
 21 class but does not arise from legislation affecting the
 22 entire membership of a class. Examples of a class are all
 23 ranchers, all teachers in the public schools, or all members
 24 of a licensed profession or occupation.

25 ~~{4}--if--a--legislator--elects--to--disclose--the--interest~~

1 ~~creating the conflict, he shall do so as provided in the~~
 2 ~~joint rules of the legislature."~~

3 Section 5. Section 2-2-201, MCA, is amended to read:

4 "2-2-201. Public officers and employees not to have
 5 interest in contracts ~~-- former employees not to contract~~
 6 with state for 6 months following termination. Members of
 7 the legislature, state, county, city, town, or township
 8 officers or any deputy or employee thereof must not be
 9 interested in any contract made by them in their official
 10 capacity or by any body, agency, or board of which they are
 11 members or employees. A former employee may not, within 6
 12 months following the termination of his employment, contract
 13 or be employed by a contractor with the state or any of its
 14 subdivisions involving matters with which he was directly
 15 involved during his employment. In this section the term:

16 (1) "be interested in" does not include holding a
 17 minority interest in a corporation;

18 (2) "contract" does not include:

19 (a) contracts awarded to the lowest responsible bidder
 20 based on competitive bidding procedures;

21 (b) merchandise sold to the highest bidder at public
 22 auctions;

23 (c) investments or deposits in financial institutions
 24 which are in the business of loaning or receiving money; or

25 (d) contracts for professional services."

1 Section 6. Section 45-7-401, MCA, is amended to read:
 2 "45-7-401. Official misconduct. (1) A public servant
 3 commits the offense of official misconduct when in his
 4 official capacity he commits any of the following acts:
 5 (a) purposely or negligently fails to perform any
 6 mandatory duty as required by law or by a court of competent
 7 jurisdiction;
 8 (b) knowingly performs an act in his official capacity
 9 which he knows is forbidden by law;
 10 (c) with the purpose to obtain advantage for himself
 11 or another, performs an act in excess of his lawful
 12 authority or in breach of the public trust of his office or
 13 employment;
 14 (d) solicits or knowingly accepts for the performance
 15 of any act a fee or reward which he knows is not authorized
 16 by law; or
 17 (e) knowingly conducts a meeting of a public agency in
 18 violation of 2-3-203.
 19 (2) A public servant convicted of the offense of
 20 official misconduct shall be fined not to exceed \$500 or be
 21 imprisoned in the county jail for a term not to exceed 6
 22 months, or both.
 23 (3) The district court shall have exclusive
 24 jurisdiction in prosecutions under this section. Any action
 25 for official misconduct must be commenced by an information

1 filed after leave to file has been granted by the district
 2 court or after a grand jury indictment has been found.
 3 (4) A public servant who has been charged as provided
 4 in subsection (3) may be suspended from his office without
 5 pay pending final judgment. Upon final judgment of
 6 conviction he shall permanently forfeit his office. Upon
 7 acquittal he shall be reinstated in his office and shall
 8 receive all backpay.
 9 (5) This section does not affect any power conferred
 10 by law to impeach or remove any public servant or any
 11 proceeding authorized by law to carry into effect such
 12 impeachment or removal."

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