

House Bill 363

In The House

January 20, 1981

Introduced and referred
to Committee on Judiciary.

February 2, 1981

Committee recommend bill
do not pass.

Rouff
Zerg

HOUSE BILL NO. 363

Brand

INTRODUCED BY *McBride* *Hampstead* *Anderson* *Kerlin*

Agnew *Nussbaum* *Nelson* *Mendenhall* *DeVries* *Wagner*
Thompson *Vincent* *Labadie* *Albright* *Walters*
A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE AND CLARIFY
Rutledge *Hammis* *Reedy* *Bongartz* *Richard C. Manning*
MONTANA'S CODE OF ETHICS TO IMPROVE ENFORCEMENT AND TO MAKE
Tamm *Worman* *Spill* *Robbins* *Hulsey*
IT MORE STRINGENT; AMENDING SECTIONS 2-2-103 THROUGH

2-2-105, 2-2-112, AND 45-7-401, MCA."

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

Section 1. Section 2-2-103, MCA, is amended to read:

"2-2-103. Public trust. (1) The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, legislators, and employees. A public officer, legislator, or employee shall carry out his duties for the benefit of the people of the state. He may not use his office, the influence created by his official position, or the information gained by virtue of that position to advance any of his own, his relative's, or his associate's personal economic interests, other than such strictly incidental benefits as may accrue from the enactment or administration of laws affecting the public generally.

(2) A public officer, legislator, or employee whose conduct departs from his fiduciary duty is liable to the people of the state as a trustee of property, is liable to a

beneficiary under 72-20-203(2), and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust. The county attorney of the county where the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund of the aggrieved agency.

(3) The following sections set forth various rules of conduct, the transgression of any of which is, as such, a violation of fiduciary duty, and various ethical principles, the transgression of any of which is not, as such, a violation of fiduciary duty."

Section 2. Section 2-2-104, MCA, is amended to read:

"2-2-104. Rules of conduct for all public officers, legislators, and employees. (1) Proof of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty. A public officer, legislator, or employee may not:

- (a) disclose or use confidential information acquired in the course of his official duties in order to further substantially his personal economic interests; or
- (b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift:
 - (i) which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties; or

1 (ii) which he knows or which a reasonable person in his
2 position should know under the circumstances is primarily
3 for the purpose of rewarding him for official action he has
4 taken.

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

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

14 "2-2-105. Ethical principles for public officers and
15 employees. (1) The principles in this section are intended
16 as guides to conduct and do not constitute violations as
17 such of the public trust of office or employment in state or
18 local government. However, failure to observe one of these
19 principles may be taken as evidence tending to establish, in
20 conjunction with all the other facts of a case, a breach of
21 fiduciary duty.

22 (2) A public officer or employee should not acquire an
23 interest in any business or undertaking which he has reason
24 to believe may be directly ~~and-substantially~~ affected to its
25 economic benefit by official action to be taken by his

1 agency.

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

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

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

17 "2-2-112. Ethical principles for legislators. (1) The
18 principles in this section are intended only as guides to
19 legislator conduct and do not constitute violations as such
20 of the public trust of legislative office.

21 (2) Whenever feasible and taking into account the fact
22 that legislative service is part-time, a legislator should
23 avoid accepting or retaining an economic benefit which
24 presents a substantial threat to the independence of his
25 judgment.

1 ~~(2)~~(3) When a legislator must take official action on
 2 a legislative matter as to which he has a conflict created
 3 by a personal, family, client, or financial interest which
 4 would be directly and substantially affected by the
 5 legislative matter, he should consider disclosing or
 6 eliminating the interest creating the conflict or abstaining
 7 from the official action. In making his decision, he should
 8 further consider:

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

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

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

15 ~~(3)~~(4) A conflict situation may arise from legislation
 16 affecting less than the entire statewide membership of a
 17 class but does not arise from legislation affecting the
 18 entire membership of a class. Examples of a class are all
 19 ranchers, all teachers in the public schools, or all members
 20 of a licensed profession or occupation.

21 ~~(4)~~(5) If a legislator elects to disclose the interest
 22 creating the conflict, he shall do so as provided in the
 23 joint rules of the legislature."

24 Section 5. Section 45-7-401, MCA, is amended to read:
 25 "45-7-401. 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;

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

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

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; or

15 (e) knowingly conducts a meeting of a public agency in
 16 violation of 2-3-203.

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

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

1 (4) A public servant who has been charged as provided
2 in subsection (3) may be suspended from his office without
3 pay pending final judgment. Upon final judgment of
4 conviction he shall permanently forfeit his office. Upon
5 acquittal he shall be reinstated in his office and shall
6 receive all backpay.

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

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