

SENATE BILL NO. 5

INTRODUCED BY DANIELS

BY REQUEST OF THE CODE COMMISSIONER

IN THE SENATE

January 7, 1985	Introduced and referred to Committee on Judiciary.
January 11, 1985	Committee recommend bill do pass. Report adopted.
January 14, 1985	Bill printed and placed on members' desks.
January 15, 1985	Second reading, do pass.
January 16, 1985	Considered correctly engrossed.
January 17, 1985	Third reading, passed. Ayes, 47; Noes, 0.
	Transmitted to House.

IN THE HOUSE

January 18, 1985	Introduced and referred to Committee on Judiciary.
March 7, 1985	Committee recommend bill be concurred in. Report adopted.
March 9, 1985	Second reading, concurred in.
March 11, 1985	Third reading, concurred in. Returned to Senate.

IN THE SENATE

March 12, 1985

Received from House.

Sent to enrolling.

Reported correctly enrolled.

1 SENATE BILL NO. 5

2 AN ACT TO PROVIDE FOR LEGAL EFFECT WHENEVER A PROVISION OF
3 LAW IS NOT CODIFIED IN THE MONTANA CODE ANNOTATED BECAUSE IT
4 IS REDUNDANT WITH A CODIFIED PROVISION AND THE CODIFIED
5 PROVISION IS SUBSEQUENTLY AMENDED, REPEALED, OR DELETED;
6 PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE AND FOR
7 RETROACTIVE APPLICABILITY.

8 Section 1. When the R.C.M., 1947, was recodified in
9 the MCA, and two or more R.C.M., 1947, provisions read the
10 same, only one of them was codified in the MCA. Section
11 1-11-101, MCA, authorizes elimination of redundant words in
12 the recodification process.

13 Section 1-11-103, MCA, provides that the MCA "shall be
14 enacted as a reenactment" of the R.C.M., 1947, and "shall be
15 given effect as a continuation" of the R.C.M., 1947.
16 Provisions of the R.C.M., 1947, that were not codified in
17 the MCA because they were redundant with other R.C.M., 1947,
18 provisions that were codified still have legal effect.

19 A problem arises whenever an R.C.M., 1947, provision
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23 provision. It could be argued that the uncodified provision
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25 or whether the codified provision, as amended, governs. This
26 bill provides that the codified provision, as amended,
27 governs. This bill also provides that whenever a codified
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37 Section 2. This section makes section 1 retroactive to
38 January 10, 1979, the day the MCA became effective. The
39 purpose of this section is to cover the codification process
40 beginning with the effective date of the MCA.

1 Examples of R.C.M., 1947, Provisions
 2 Not Codified in the Montana Code Annotated
 3 Because They Were Redundant
 4 With Other Codified Provisions

5 Example 1. Section 16-519, R.C.M. 1947, reads:

6 "16-519. (4406) Misdemeanor and malfeasance in office.
 7 Any member of the board of county commissioners, or any
 8 other officer who unlawfully and knowingly violates any of
 9 the provisions of this act, or fails or refuses to perform
 10 any duty imposed upon him hereunder, shall be guilty of a
 11 misdemeanor and of malfeasance in office, and shall be
 12 deprived of his office by a decree of a court of competent
 13 jurisdiction, after trial and conviction."

14 This section was not codified in the Montana Code
 15 Annotated because it is redundant with 45-7-401(1)(a),
 16 (1)(b), and (4).

17 Section 45-7-401, MCA, reads:

18 "45-7-401. Official misconduct. (1) A public servant
 19 commits the offense of official misconduct when in his
 20 official capacity he commits any of the following acts:

21 (a) purposely or negligently fails to perform any
 22 mandatory duty as required by law or by a court of competent
 23 jurisdiction;

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

26 (c) with the purpose to obtain advantage for himself
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 28 authority;

29 (d) solicits or knowingly accepts for the performance
 30 of any act a fee or reward which he knows is not authorized
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32 (e) knowingly conducts a meeting of a public agency in
 33 violation of 2-3-203.

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

38 (3) The district court shall have exclusive
 39 jurisdiction in prosecutions under this section. Any action
 40 for official misconduct must be commenced by an information
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 42 court or after a grand jury indictment has been found.

43 (4) A public servant who has been charged as provided
 44 in subsection (3) may be suspended from his office without
 45 pay pending final judgment. Upon final judgment of
 46 conviction he shall permanently forfeit his office. Upon

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4 by law to impeach or remove any public servant or any
5 proceeding authorized by law to carry into effect such
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7 The codified and uncodified provisions were enacted by
8 different acts of the Legislature. Since they both provided
9 the same thing, only one was codified.

10 Example 2. Subsections (1) and (2) of section 26-1802,
11 R.C.M. 1947, were not codified in the Montana Code Annotated
12 because they are redundant with 87-1-101(2) and (3). These
13 provisions of the R.C.M., 1947, and the Montana Code
14 Annotated read:

15 "26-1802. Definitions. As used in this chapter the
16 following definitions apply:

17 (1) "Department" means the department of fish and
18 game.

19 (2) "Director" means the director of the state
20 department of fish and game."

21 "87-1-101. Definitions. Unless the context requires
22 otherwise, in this title the following definitions apply:

23 (1) "Commission" means the fish and game commission
24 provided for in 2-15-3402.

25 (2) "Department" means the department of fish,
26 wildlife, and parks provided for in Title 2, chapter 15,
27 part 34.

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29 and parks provided for in 2-15-3401.

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31 The Department of Fish and Game referred to in the
32 R.C.M., 1947, section was, of course, renamed the Department
33 of Fish, Wildlife, and Parks.

34 Example 3. Section 72-170, R.C.M. 1947, and 69-2-211, MCA,
35 read:

36 "72-170. Notice to be served on consumer counsel. In
37 addition to all other forms of notice of hearings conducted
38 by the commission provided for in this title, notices of all
39 hearings shall be served upon the Montana consumer counsel."

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 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 13 Section 1. Provisions of law not codified in Montana
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 17 was not codified in the Montana Code Annotated because such
 18 uncodified provision was redundant with such codified
 19 provision, the codified provision, as amended, governs and
 20 must be given effect over the uncodified provision.
 21 (2) Repeal or deletion of a provision of the Montana
 22 Code Annotated also repeals or deletes a provision of law
 23 that was not codified in the Montana Code Annotated because
 24 it was redundant with the repealed or deleted provision of
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1 deleted provision of the Montana Code Annotated was amended
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2 Not Codified in the Montana Code Annotated
3 Because They Were Redundant
4 With Other Codified Provisions

5 Example 1. Section 16-519, R.C.M. 1947, reads:

6 "16-519. (4406) Misdemeanor and malfeasance in office.
7 Any member of the board of county commissioners, or any
8 other officer who unlawfully and knowingly violates any of
9 the provisions of this act, or fails or refuses to perform
10 any duty imposed upon him hereunder, shall be guilty of a
11 misdemeanor and of malfeasance in office, and shall be
12 deprived of his office by a decree of a court of competent
13 jurisdiction, after trial and conviction."

14 This section was not codified in the Montana Code
15 Annotated because it is redundant with 45-7-401(1)(a),
16 (1)(b), and (4).

17 Section 45-7-401, MCA, reads:

18 "45-7-401. Official misconduct. (1) A public servant
19 commits the offense of official misconduct when in his
20 official capacity he commits any of the following acts:

21 (a) purposely or negligently fails to perform any
22 mandatory duty as required by law or by a court of competent
23 jurisdiction;

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

26 (c) with the purpose to obtain advantage for himself
27 or another, performs an act in excess of his lawful
28 authority;

29 (d) solicits or knowingly accepts for the performance
30 of any act a fee or reward which he knows is not authorized
31 by law; or

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

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

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

43 (4) A public servant who has been charged as provided
44 in subsection (3) may be suspended from his office without
45 pay pending final judgment. Upon final judgment of
46 conviction he shall permanently forfeit his office. Upon

1 acquittal he shall be reinstated in his office and shall
2 receive all backpay.

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

7 The codified and uncodified provisions were enacted by
8 different acts of the Legislature. Since they both provided
9 the same thing, only one was codified.

10 Example 2. Subsections (1) and (2) of section 26-1802,
11 R.C.M. 1947, were not codified in the Montana Code Annotated
12 because they are redundant with 87-1-101(2) and (3). These
13 provisions of the R.C.M., 1947, and the Montana Code
14 Annotated read:

15 "26-1802. Definitions. As used in this chapter the
16 following definitions apply:

17 (1) "Department" means the department of fish and
18 game.

19 (2) "Director" means the director of the state
20 department of fish and game."

21 "87-1-101. Definitions. Unless the context requires
22 otherwise, in this title the following definitions apply:

23 (1) "Commission" means the fish and game commission
24 provided for in 2-15-3402.

25 (2) "Department" means the department of fish,
26 wildlife, and parks provided for in Title 2, chapter 15,
27 part 34.

28 (3) "Director" means the director of fish, wildlife,
29 and parks provided for in 2-15-3401.

30 (4) "Warden" means a state fish and game warden."

31 The Department of Fish and Game referred to in the
32 R.C.M., 1947, section was, of course, renamed the Department
33 of Fish, Wildlife, and Parks.

34 Example 3. Section 72-170, R.C.M. 1947, and 69-2-211, MCA,
35 read:

36 "72-170. Notice to be served on consumer counsel. In
37 addition to all other forms of notice of hearings conducted
38 by the commission provided for in this title, notices of all
39 hearings shall be served upon the Montana consumer counsel."

40 "69-2-211. Notice to consumer counsel. In addition to
41 all other forms of notice of hearings conducted by the
42 commission provided for in this title, notices of all
43 hearings shall be served upon the consumer counsel."

1 The R.C.M., 1947, provision was not codified in the
2 Montana Code Annotated because it is redundant with
3 69-2-211, MCA.

SENATE BILL NO. 5

INTRODUCED BY DANIELS

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR LEGAL EFFECT WHENEVER A PROVISION OF LAW IS NOT CODIFIED IN THE MONTANA CODE ANNOTATED BECAUSE IT IS REDUNDANT WITH A CODIFIED PROVISION AND THE CODIFIED PROVISION IS SUBSEQUENTLY AMENDED, REPEALED, OR DELETED; PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE AND FOR RETROACTIVE APPLICABILITY."

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

Section 1. Provisions of law not codified in Montana Code Annotated because redundant. (1) Whenever a provision of law codified in the Montana Code Annotated is amended in such a way that it conflicts with a provision of law that was not codified in the Montana Code Annotated because such uncodified provision was redundant with such codified provision, the codified provision, as amended, governs and must be given effect over the uncodified provision.

(2) Repeal or deletion of a provision of the Montana Code Annotated also repeals or deletes a provision of law that was not codified in the Montana Code Annotated because it was redundant with the repealed or deleted provision of the Montana Code Annotated, whether or not the repealed or

deleted provision of the Montana Code Annotated was amended prior to its repeal or deletion.

Section 2. Effective date -- applicability. This act is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to amendments, repeals, and deletions occurring after January 9, 1979.

-End-

