

HOUSE BILL 38

Introduced by Bardanouve

12/23	Introduced
12/30	Referred to Judiciary
1/04	First Reading
1/06	Hearing
1/07	Tabled in Committee

HOUSE BILL NO. 38

INTRODUCED BY BARDANOUVE

BY REQUEST OF THE LEGISLATIVE FINANCE COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CRIMINAL STATUTES; REVISING ACTIONS RELATING TO THE UNLAWFUL USE OF A COMPUTER; DEFINING CERTAIN BREACHES AND AUTHORIZATIONS TO BREACH A FIDUCIARY DUTY AS OFFICIAL MISCONDUCT; CLARIFYING THE DISPOSITION OF CIVIL PENALTIES FOR FIDUCIARY VIOLATIONS; AND AMENDING SECTIONS 2-2-103, 45-6-310, 45-6-311, AND 45-7-401, MCA."

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

Section 1. Section 45-6-310, MCA, is amended to read:

"45-6-310. Definition -- computer use. As used in 45-6-311, the term "obtain the use of" means to instruct, communicate with, store data in, alter data on, retrieve data from, cause input to, cause output from, or otherwise make use of any resources of a computer, computer system, or computer network or to cause another to instruct, communicate with, store data in, alter data on, retrieve data from, cause input to, cause output from, or otherwise make use of any resources of a computer, computer system, or computer network."

Section 2. Section 45-6-311, MCA, is amended to read:

"45-6-311. Unlawful use of a computer. (1) A person commits the offense of unlawful use of a computer if he the person knowingly or purposely:

(a) obtains the use of any computer, computer system, or computer network without the express consent of the owner;

(b) alters or destroys or causes another to alter or destroy a computer program, computer data, or computer software without consent of the owner; or

(c) obtains the use of or alters or destroys a computer, computer data, computer system, computer network, or any part thereof as part of a deception for the purpose of obtaining money, property, or computer services from the owner of the computer, computer system, computer network, or part thereof or from any other person.

(2) A person convicted of the offense of unlawful use of a computer involving property not exceeding \$300 in value shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of the offense of unlawful use of a computer involving property exceeding \$300 in value shall be fined not more than 2 1/2 times the value of the property used, altered, destroyed, or obtained or be imprisoned in the state prison for a term not to exceed 10 years, or both."

1 **Section 3.** 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 the
4 person's official capacity he the person commits any of the
5 following acts:

6 (a) purposely or negligently fails to perform any
7 mandatory duty as required by law or by a court of competent
8 jurisdiction;

9 (b) knowingly performs an act in his the person's
10 official capacity ~~which--he~~ that the person knows is
11 forbidden by law;

12 (c) purposely or knowingly commits an act or purports
13 to authorize another to commit an act forbidden by 2-2-121;

14 ~~(d)~~ with the purpose to obtain advantage for himself
15 the person or another, performs an act in excess of his the
16 person's lawful authority;

17 ~~(d)~~(e) solicits or knowingly accepts for the
18 performance of any act a fee or reward ~~which--he~~ that the
19 person knows is not authorized by law; or

20 ~~(e)~~(f) knowingly conducts a meeting of a public agency
21 in violation of 2-3-203.

22 (2) A public servant convicted of the offense of
23 official misconduct shall be fined an amount not to exceed
24 \$500 or be imprisoned in the county jail for a term not to
25 exceed 6 months, or both.

1 (3) The district court ~~shall--have~~ has exclusive
2 jurisdiction in prosecutions under this section. Any action
3 for official misconduct must be commenced by an information
4 filed after leave to file has been granted by the district
5 court or after a grand jury indictment has been found.

6 (4) A public servant who has been charged as provided
7 in subsection (3) may be suspended from his office without
8 pay pending final judgment. Upon final judgment of
9 conviction he the person shall permanently forfeit his the
10 person's office. Upon acquittal he ~~shall~~ the person must be
11 reinstated in his office and ~~shall~~ must receive all backpay.

12 (5) This section does not affect any power conferred by
13 law to impeach or remove any public servant or any
14 proceeding authorized by law to carry into effect such an
15 impeachment or removal."

16 **Section 4.** Section 2-2-103, MCA, is amended to read:

17 "2-2-103. Public trust. (1) The holding of public
18 office or employment is a public trust, created by the
19 confidence which that the electorate reposes in the
20 integrity of public officers, legislators, and employees. A
21 public officer, legislator, or employee shall carry out his
22 the duties of the position for the benefit of the people of
23 the state.

24 (2) A public officer, legislator, or employee whose
25 conduct departs from his proper fiduciary duty is liable to

1 the people of the state as a trustee of property, is liable
2 to a beneficiary under 72-34-105, and shall suffer such
3 other liabilities as a private fiduciary would suffer for
4 abuse of his trust. The county attorney of the county where
5 the trust is violated may bring appropriate judicial
6 proceedings on behalf of the people. Any moneys money
7 collected in ~~such--actions-shall~~ a civil action under this
8 part must be paid to the general fund of the aggrieved
9 agency.

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

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