

HOUSE BILL 94

Introduced by Harper

12/31	Introduced
1/04	Referred to Judiciary
1/04	First Reading
1/12	Hearing
2/11	Committee Report--Bill Concurred
2/13	2nd Reading Passed
2/16	3rd Reading Passed
	Transmitted to Senate
2/20	First Reading
2/20	Referred to State Administration
3/09	Hearing
3/09	Committee Report--Bill Concurred
3/10	Taken from 2nd Reading and Rereferred to Business & Industry
3/24	Hearing
3/27	Committee Report--Bill Concurred as Amended
3/30	2nd Reading Concur Motion Failed
3/31	2nd Reading Concur Motion Failed
3/31	2nd Reading Indefinitely Postponed

HOUSE BILL NO. 94
INTRODUCED BY HARPER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE DISCLOSURE OF CONFLICT OF INTEREST LAW AND RULES OF CONDUCT FOR LEGISLATORS; REQUIRING DISCLOSURE OF A CONFLICT OF INTEREST; PROHIBITING A LEGISLATOR FROM LOBBYING WITHIN 2 YEARS OF LEAVING OFFICE; AND AMENDING SECTIONS 2-2-104, 2-2-111, 2-2-112, AND 5-7-103, MCA."

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

Section 1. 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 a fiduciary duty. A public officer, legislator, or employee may not:

(a) disclose or use confidential information acquired in the course of his the officer's or employee's official duties in order to further substantially his the officer's or employee's personal economic interests; or

(b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift:

(i) which that would tend improperly to influence a reasonable person in his that position to depart from the

faithful and impartial discharge of his the officer's or employee's public duties; or

(ii) ~~which-he~~ that the officer or employee knows or which that a reasonable person in his that position should know under the circumstances is primarily for the purpose of rewarding him the officer or employee for official action he has taken.

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

Section 2. Section 2-2-111, MCA, is amended to read:

"2-2-111. Rules of conduct for legislators. (1) Proof of commission of any act enumerated in this section subsection is proof that the legislator committing the act has breached his a fiduciary duty. A legislator may not:

(1)(a) accept a fee, contingent fee, or any other compensation, except his the legislator's official compensation provided by statute, for promoting or opposing the passage of legislation;

(2)(b) seek other employment ~~for-himself~~ or solicit a

contract for his the legislator's services by the use of his the legislator's office;

(c) disclose or use confidential information acquired in the course of the legislator's official duties in order to further the legislator's personal economic interest;

(d) accept a gift of more than \$50 or a substantial economic benefit tantamount to a gift:

(i) that would tend improperly to influence a reasonable person in the legislator's position to depart from the faithful and impartial discharge of the legislator's public duties; or

(ii) that the legislator knows or that a reasonable person in the legislator's position should know under the circumstances is primarily for the purpose of rewarding the legislator for official action the legislator has taken.

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

Section 3. Section 2-2-112, MCA, is amended to read:

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

principles in this section are intended only as guides to legislator conduct and do not constitute violations as such of the public trust of legislative office.

(2) When a legislator must take official action on a legislative matter as to which he the legislator has a conflict created by a personal or financial interest ~~which~~ that would be directly and substantially affected by the legislative matter, he ~~should--consider--disclosing~~ the legislator shall disclose or eliminating eliminate the interest creating the conflict or ~~abstaining~~ abstain from the official action. In making his this decision, he the legislator should further consider:

(a) whether the conflict impedes his the legislator's independence of judgment;

(b) the effect of his the legislator's participation on public confidence in the integrity of the legislature; and

(c) whether his the legislator's participation is likely to have any significant effect on the disposition of the matter.

(3) A conflict situation does not arise from legislation affecting the entire membership of a class.

(4) ~~if--a~~ A legislator ~~elects--to~~ shall disclose the interest creating the conflict, ~~he shall do so~~ as provided in the joint rules of the legislature."

Section 4. Section 5-7-103, MCA, is amended to read:

1 "5-7-103. Licenses -- fees -- eligibility. (1) (a) Any
2 Except as provided in subsection (1)(b), an adult of good
3 moral character who is otherwise qualified under this
4 chapter may be licensed as a lobbyist. The commissioner
5 shall provide a license application form. The application
6 form may be obtained in the office of the commissioner and
7 filed therein in the office. Upon approval of the
8 application and receipt of the license fee of \$10 by the
9 commissioner, a license ~~shall~~ must be issued which ~~that~~
10 entitles the licensee to practice lobbying on behalf of one
11 or more enumerated principals. Each license ~~shall--expire~~
12 expires on December 31 of each even-numbered year or may be
13 terminated at the request of the lobbyist.

14 (b) A legislator may not within 2 years of leaving
15 office be licensed as a lobbyist.

16 (2) (a) Except as provided in subsection (2)(b), an
17 application may not be disapproved without affording the
18 applicant a hearing. The hearing must be held and the
19 decision entered within 10 days of the date of the filing of
20 the application.

21 (b) An application may not be approved if a principal
22 has failed to file reports required under 5-7-208.

23 (3) The fines and license fees collected under this
24 chapter ~~shall~~ must be deposited in the state treasury."

-End-

APPROVED BY COMMITTEE
ON JUDICIARYHOUSE BILL NO. 94
INTRODUCED BY HARPER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE DISCLOSURE OF CONFLICT OF INTEREST LAW AND RULES OF CONDUCT FOR LEGISLATORS; REQUIRING DISCLOSURE OF A CONFLICT OF INTEREST; ~~PROHIBITING--A--LEGISLATOR--FROM--LOBBYING--WITHIN--2 YEARS--OF--LEAVING--OFFICE;~~ AND AMENDING SECTIONS 2-2-104, 2-2-111, AND 2-2-112, AND 5-7-103, MCA."

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

Section 1. 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 a fiduciary duty. A public officer, ~~legislator,~~ or employee may not:

(a) disclose or use confidential information acquired in the course of his the officer's or employee's official duties in order to further substantially his the officer's or employee's personal economic interests; or

(b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift:

(i) which that would tend improperly to influence a reasonable person in his that position to depart from the

faithful and impartial discharge of his the officer's or employee's public duties; or

(ii) ~~which he~~ that the officer or employee knows or which that a reasonable person in his that position should know under the circumstances is primarily for the purpose of rewarding him the officer or employee for official action he has taken.

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

Section 2. Section 2-2-111, MCA, is amended to read:

"2-2-111. Rules of conduct for legislators. (1) Proof of commission of any act enumerated in this section subsection is proof that the legislator committing the act has breached his a fiduciary duty. A legislator may not:

(1)(a) accept a fee, contingent fee, or any other compensation, except his the legislator's official compensation provided by statute, for promoting or opposing the passage of legislation;

(2)(b) seek other employment ~~for-himself~~ or solicit a

1 contract for his the legislator's services by the use of his
2 the legislator's office;

3 (c) disclose or use confidential information acquired
4 in the course of the legislator's official duties in order
5 to further the legislator's personal economic interest;

6 (d) accept a gift of more than \$50 or a substantial
7 economic benefit tantamount to a gift;

8 (i) that would tend improperly to influence a
9 reasonable person in the legislator's position to depart
10 from the faithful and impartial discharge of the
11 legislator's public duties; or

12 (ii) that the legislator knows or that a reasonable
13 person in the legislator's position should know under the
14 circumstances is primarily for the purpose of rewarding the
15 legislator for official action the legislator has taken; OR
16 RECEIVE, DIRECTLY OR INDIRECTLY, A GIFT OR SUBSTANTIAL
17 ECONOMIC BENEFIT AS A GRATUITY FROM A PERSON OR ENTITY
18 EXCEPT AS PROVIDED IN THIS SECTION;

19 (E) ACCEPT A GIFT OR OTHER GRATUITY IF IT COULD
20 REASONABLY BE INFERRED THAT THE GIFT OR GRATUITY IS INTENDED
21 TO INFLUENCE THE PERFORMANCE OF THE LEGISLATOR'S OFFICIAL
22 DUTIES, ACTIONS, OR JUDGMENTS;

23 (F) ACCEPT A GIFT OR GRATUITY THAT THE LEGISLATOR KNOWS
24 OR SHOULD UNDER THE CIRCUMSTANCES KNOW IS PRIMARILY FOR THE
25 PURPOSE OF REWARDING THE LEGISLATOR FOR OFFICIAL ACTION THE

1 LEGISLATOR HAS TAKEN.

2 (2) A LEGISLATOR MAY ACCEPT REIMBURSEMENT FOR
3 REASONABLE FOOD, TRAVEL, LODGING, AND OTHER EXPENSES
4 INCURRED TO ATTEND A MEETING AT WHICH THE LEGISLATOR HAS A
5 SPEAKING ENGAGEMENT, PARTICIPATES IN A PANEL DISCUSSION, OR
6 OTHERWISE ENGAGES IN AN ACTIVITY IN THE LEGISLATOR'S
7 OFFICIAL CAPACITY.

8 (2)(3) An economic benefit tantamount to a gift
9 includes without limitation a loan at a rate of interest
10 substantially lower than the commercial rate then currently
11 prevalent for similar loans and compensation received for
12 private services rendered at a rate substantially exceeding
13 the fair market value of the services. Campaign
14 contributions reported as required by statute are not gifts
15 or economic benefits tantamount to gifts."

16 **Section 3.** Section 2-2-112, MCA, is amended to read:

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

22 (2)(1) When a legislator must take official action on a
23 legislative matter as to which he the legislator has a
24 conflict created by a personal or financial interest which
25 that would be directly and substantially affected by the

1 legislative matter, he should--consider--disclosing the
2 legislator shall disclose or ~~eliminating~~ eliminate the
3 interest creating the conflict or ~~abstaining~~ abstain from
4 the official action. In making his this decision, he the
5 legislator should further consider:

6 (a) whether the conflict impedes his the legislator's
7 independence of judgment;

8 (b) the effect of his the legislator's participation on
9 public confidence in the integrity of the legislature; and

10 (c) whether his the legislator's participation is
11 likely to have any significant effect on the disposition of
12 the matter.

13 ~~{3}{2}~~ A conflict situation does not arise from
14 legislation affecting the entire membership of a class.

15 ~~{4}{3}~~ If--a A legislator elects to ~~shall~~ WHO ELECTS TO
16 disclose OR ELIMINATE the interest creating the conflict, he
17 ~~shall do so~~ OR WHO ELECTS TO ABSTAIN SHALL DO SO as provided
18 in the joint rules of the legislature."

19 **Section 4.**--Section 5-7-103, MCA, is amended to read:--

20 "5-7-103.---Licenses---fees---eligibility,--{1} {a} Any
21 Except--as--provided--in-subsection--{1}{b}--an adult-of-good
22 moral--character--who--is--otherwise--qualified--under--this
23 chapter--may--be--licensed--as--a--lobbyist.--The--commissioner
24 shall--provide--a--license-application-form.The application
25 form--may--be--obtained--in--the--office--of--the--commissioner--and

1 filed--therein in--the--office.--Upon--approval--of--the
2 application--and--receipt--of--the--license--fee--of--\$10--by--the
3 commissioner,--a--license--shall must be issued which that
4 entitles--the--licensee--to--practice--lobbying--on--behalf--of--one
5 or--more--enumerated--principals.--Each license shall expire
6 expires on December 31 of each even-numbered year or may be
7 terminated at the request of the lobbyist.

8 {b}--A--legislator--may--not--within--2--years--of--leaving
9 office--be--licensed--as--a--lobbyist.

10 {2}--{a}--Except--as--provided--in--subsection--{2}{b},--an
11 application--may--not--be--disapproved--without--affording--the
12 applicant--a--hearing.--The--hearing--must--be--held--and--the
13 decision--entered--within--10--days--of--the--date--of--the--filing--of
14 the--application.

15 {b}--An--application--may--not--be--approved--if--a--principal
16 has--failed--to--file--reports--required--under--5-7-200.

17 {3}--The--fines--and--license--fees--collected--under--this
18 chapter--shall must be deposited in the state treasury."

-End-

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(i) which that would tend improperly to influence a reasonable person in his that position to depart from the

faithful and impartial discharge of his the officer's or employee's public duties; or

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contract for his the legislator's services by the use of his
the legislator's office;

(c) disclose or use confidential information acquired
in the course of the legislator's official duties in order
to further the legislator's personal economic interest;

(d) accept a--gift--of--more--than--\$50--or--a--substantial
economic--benefit--tantamount--to--a--gift;

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~~reasonable--person--in--the--legislator's--position--to--depart~~
~~from--the--faithful--and--impartial--discharge--of--the~~
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~~{ii}--that--the--legislator--knows--or--that--a--reasonable~~
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Section 3. Section 2-2-112, MCA, is amended to read:

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legislative matter as to which he the legislator has a
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 disclose OR ELIMINATE the interest creating the conflict, he
 shall-do-so OR WHO ELECTS TO ABSTAIN SHALL DO SO as provided
 in the joint rules of the legislature."

Section 4.--Section 5-7-183, MCA, is amended to read:--

"5-7-183. Licenses---fees---eligibility--(1) {a} Any
Except--as--provided--in-subsection-(1){b}, an adult-of-good
 moral--character--who--is--otherwise--qualified--under--this
 chapter-may-be-licensed-as-a-lobbyist.--The--commissioner
 shall--provide--a--license-application-form.--The-application
 form-may-be-obtained-in-the-office-of-the--commissioner--and

filed---therein in---the--officer Upon--approval--of--the
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 terminated-at-the-request-of-the-lobbyist.

{b}--A--legislator--may--not--within--2-years-of-leaving
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{2}--(a)--Except-as-provided--in--subsection--(2){b},--an
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 applicant-a-hearing.--The--hearing--must--be--held--and--the
 decision-entered-within-10-days-of-the-date-of-the-filing-of
 the-application.

{b}--An--application--may-not-be-approved-if-a-principal
 has-failed-to-file-reports-required-under-5-7-208.

{3}--The-fines-and-license-fees--collected--under--this
 chapter-shall must be-deposited-in-the-state-treasury."

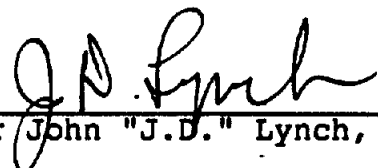
-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 26, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 94 (third reading copy -- blue), respectfully report that House Bill No. 94 be amended as follows and as so amended be concurred in.

Signed: 
Senator John "J.D." Lynch, Chair

That such amendments read:

1. Page 3, lines 19 and 23.

Following: "A"

Insert: "substantial"

2. Page 3, line 21.

Following: "TO"

Insert: "improperly"

-END-

SENATE

HB 94

681403SC.Sma

m - Amd. Coord.
m Sec. of Senate

Lynch
Senator Carrying Bill