

HOUSE BILL NO. 607

INTRODUCED BY K. WAGONER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO ETHICS,
5 STANDARDS OF CONDUCT, AND NEPOTISM FOR PUBLIC OFFICIALS AND PUBLIC EMPLOYEES;
6 PROVIDING A STATEMENT OF LEGISLATIVE INTENT AND POLICY; REVISING DEFINITIONS; REVISING
7 ENFORCEMENT PROVISIONS; TRANSFERRING ENFORCEMENT AUTHORITY FROM THE
8 COMMISSIONER OF POLITICAL PRACTICES TO THE DEPARTMENT OF JUSTICE; REVISING DISCLOSURE
9 OF TWO SEPARATE SALARIES FROM PUBLIC EMPLOYMENT; AUTHORIZING THE DEPARTMENT OF
10 JUSTICE TO ADOPT RULES; PROVIDING THAT IT IS UNLAWFUL TO RETALIATE AGAINST A PERSON
11 WHO FILES A COMPLAINT; REQUIRING DISCIPLINARY ACTION FOR VIOLATIONS; REVISING CIVIL AND
12 CRIMINAL PENALTIES; PROVIDING THAT PUBLIC RETIREMENT BENEFIT PAYMENTS MAY BE USED TO
13 PAY FINES AND RESTITUTION; REQUIRING TERMINATION FROM EMPLOYMENT OR REMOVAL FROM
14 OFFICE FOR VIOLATIONS; REQUIRING REPORTING BY THE DEPARTMENT OF JUSTICE AND CLERKS
15 OF DISTRICT COURT TO THE LEGISLATIVE SERVICES DIVISION; REQUIRING THE LEGISLATIVE
16 SERVICES DIVISION TO PROVIDE A REPORT TO LEGISLATORS; REQUIRING COMPLAINTS
17 CONCERNING A LEGISLATOR TO BE REFERRED TO A LEGISLATIVE ETHICS COMMITTEE; REPEALING
18 THE IMMUNITY OF THE STATE, AN OFFICER, EMPLOYEE, OR AGENT OF THE STATE, OR A MEMBER OF
19 THE MONTANA NATIONAL GUARD FROM CIVIL LIABILITY FOR DAMAGES THAT RESULT FROM AN
20 ACTION THAT OCCURS WHILE THE INDIVIDUAL IS CONSIDERED AN EMPLOYEE OF THE FEDERAL
21 GOVERNMENT; AMENDING SECTIONS 2-2-101, 2-2-102, 2-2-104, 2-2-136, 2-2-144, AND 2-2-304, MCA; AND
22 REPEALING SECTION 10-1-111, MCA."

23

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

25

26 **Section 1.** Section 2-2-101, MCA, is amended to read:

27 **"2-2-101. Statement of purpose Legislative intent and declaration of policy.** ~~The purpose of this part~~
28 ~~is to set forth a code of ethics prohibiting conflict between public duty and private interest as required by the~~
29 ~~constitution of Montana. This code recognizes distinctions between legislators, other officers and employees of~~
30 ~~state government, and officers and employees of local government and prescribes some standards of conduct~~



1 common to all categories and some standards of conduct adapted to each category. The provisions of this part
2 recognize that some actions are conflicts per se between public duty and private interest while other actions may
3 or may not pose such conflicts depending upon the surrounding circumstances: (1) It is essential to the proper
4 conduct and operation of government that public officials be independent and impartial and that the public office
5 not be used for private gain, other than the remuneration provided by law. The public interest, therefore, requires
6 that the law protect against any conflict of interest and establish standards for the conduct of elected officials and
7 government employees in situations in which a conflict of interest may exist.

8 (2) It is also essential that government attract those citizens best qualified to serve as public employees.
9 Thus, the law concerning conflicts of interest must be designed so the law does not unreasonably or
10 unnecessarily impede government employers from recruiting and retaining those with the best qualifications. Also,
11 public officials should not be denied the opportunity, which is available to all other citizens, to acquire and retain
12 private economic interests, except when those interests conflict with the official's responsibility to the public.

13 (3) It is also essential that people be free to seek redress of their grievances and express their opinions
14 on current issues and on past or pending legislative and executive actions to officials at every level of
15 government. In order to preserve and maintain the integrity of the governmental process, it is necessary that the
16 identity, expenditures, and activities of persons who regularly engage in efforts to persuade public officials to take
17 specific actions, either by direct communication with the officials or by solicitation of others to engage in the
18 efforts, be regularly disclosed to the people.

19 (4) It is the intent of this chapter to implement these objectives of protecting the integrity of government
20 and of facilitating the recruitment and retention of qualified personnel by prescribing restrictions against conflicts
21 of interest without creating unnecessary barriers to public service.

22 (5) It is the policy of the state that no officer or employee of a state agency or of a county, city, or other
23 political subdivision of the state and no member of the legislature or legislative employee may have any interest,
24 financial or otherwise, direct or indirect, engage in any business transaction or professional activity, or incur any
25 obligation of any nature that is in substantial conflict with the proper discharge of the person's duties in the public
26 interest.

27 (6) The legislature considers the reporting required pursuant to [section 10] to be a compelling state
28 interest. Public employees and public officers hold positions of public trust and have a public duty to act ethically
29 and responsibly. Additionally, the information to be reported is essential and necessary if the legislature is to fulfill
30 its duty to enact and oversee standards of conduct for public employees."

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Section 2. Section 2-2-102, MCA, is amended to read:

"2-2-102. Definitions. As used in this ~~part~~ chapter, the following definitions apply:

(1) "Business" includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

(2) "Compensation" means any money or economic benefit conferred on or received by any person in return for services rendered or to be rendered by the person or another.

(3) "Department" means the department of justice established in 2-15-2001.

~~(3)(4)~~ (a) "Gift of substantial value" means a gift with a value of \$50 or more for an individual.

(b) The term does not include:

(i) a gift that is not used and that, within 30 days after receipt, is returned to the donor ~~or delivered to a charitable organization or the state and that is not claimed as a charitable contribution for federal income tax purposes;~~

(ii) food and beverages consumed on the occasion when participation in a charitable, civic, or community event bears a relationship to the public officer's or public employee's office or employment or when the officer or employee is in attendance in an official capacity;

(iii) educational material directly related to official governmental duties;

(iv) an award publicly presented in recognition of public service; or

(v) educational activity that:

(A) does not place or appear to place the recipient under obligation;

(B) clearly serves the public good; and

(C) is not lavish or extravagant.

~~(4)(5)~~ "Local government" means a county, a consolidated government, an incorporated city or town, a school district, or a special district.

~~(5)(6)~~ "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, that involves the use of discretionary authority.

~~(6)(7)~~ "Private interest" means an interest held by an individual that is:

(a) an ownership interest in a business;

(b) a creditor interest in an insolvent business;

(c) an employment or prospective employment for which negotiations have begun;

- 1 (d) an ownership interest in real property;
- 2 (e) a loan or other debtor interest; or
- 3 (f) a directorship or officership in a business.
- 4 ~~(7)~~(8) "Public employee" means:
- 5 (a) any temporary or permanent employee of the state;
- 6 (b) any temporary or permanent employee of a local government;
- 7 (c) a member of a quasi-judicial board or commission or of a board, commission, or committee with
- 8 rulemaking authority; and
- 9 (d) a person under contract to the state.
- 10 ~~(8)~~(9) (a) "Public officer" includes any state officer and any elected officer of a local government.
- 11 (b) For the purposes of 67-11-104, the term also includes a commissioner of an airport authority.
- 12 ~~(9)~~(10) "Special district" means a unit of local government, authorized by law to perform a single function
- 13 or a limited number of functions. The term includes but is not limited to conservation districts, water districts, weed
- 14 management districts, irrigation districts, fire districts, community college districts, hospital districts, sewer
- 15 districts, and transportation districts. The term also includes any district or other entity formed by interlocal
- 16 agreement.
- 17 ~~(10)~~(11) (a) "State agency" includes:
- 18 (i) the state;
- 19 (ii) the legislature and its committees;
- 20 (iii) all executive departments, boards, commissions, committees, bureaus, and offices;
- 21 (iv) the university system; and
- 22 (v) all independent commissions and other establishments of the state government.
- 23 (b) The term does not include the judicial branch.
- 24 ~~(11)~~(12) "State officer" includes all elected officers and directors of the executive branch of state
- 25 government as defined in 2-15-102."

26

27 **Section 3.** Section 2-2-104, MCA, is amended to read:

28 **"2-2-104. Rules of conduct for public officers, legislators, and public employees.** (1) Proof of

29 commission of any act enumerated in this section is proof that the actor has breached the actor's public duty. A

30 public officer, legislator, or public employee may not:

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

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

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

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

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

12 (3) (a) Except as provided in subsection (3)(b), a public officer, legislator, or public employee may not
13 receive salaries from two separate public employment positions that overlap for the hours being compensated,
14 unless:

15 (i) the public officer, legislator, or public employee reimburses the public entity from which the employee
16 is absent for the salary paid for performing the function from which the officer, legislator, or employee is absent;
17 or

18 (ii) the public officer's, legislator's, or public employee's salary from one employer is reduced by the
19 amount of salary received from the other public employer in order to avoid duplicate compensation for the
20 overlapping hours.

21 (b) Subsection (3)(a) does not prohibit:

22 (i) a public officer, legislator, or public employee from receiving income from the use of accrued leave
23 or compensatory time during the period of overlapping employment; or

24 (ii) a public school teacher from receiving payment from a college or university for the supervision of
25 student teachers who are enrolled in a teacher education program at the college or university if the supervision
26 is performed concurrently with the school teacher's duties for a public school district.

27 (c) In order to determine compliance with this subsection (3):

28 (i) a public officer, ~~legislator,~~ or public employee subject to this subsection (3) shall disclose the amounts
29 received from the two separate public employment positions to the ~~commissioner of political practices~~
30 department; and

1 (ii) a legislator shall disclose the amounts received from the two separate public employment positions
2 to the commissioner of political practices."

3

4 **Section 4.** Section 2-2-136, MCA, is amended to read:

5 **"2-2-136. Enforcement for state officers, legislators, and state employees -- referral of complaint**
6 **involving county attorney.** (1) (a) A person alleging a violation of this ~~part chapter~~ by a state officer, legislator,
7 or state employee may file a complaint with the ~~commissioner of political practices department~~. The ~~commissioner~~
8 ~~department~~ does not have jurisdiction for a complaint concerning a legislator if a legislative act is involved in the
9 complaint. The ~~commissioner department~~ also has jurisdiction over complaints against a county attorney that are
10 referred by a local government review panel pursuant to 2-2-144 or filed by a person directly with the
11 ~~commissioner department~~ pursuant to 2-2-144(6).

12 (b) If a complaint is filed against ~~the commissioner or another an~~ individual employed in the ~~office of the~~
13 ~~commissioner department~~, the complaint must be ~~resolved in the manner provided for in 13-37-111(5)~~ handled
14 by the county attorney for Lewis and Clark County, who has the power and duty to act in place of the department
15 pursuant to this chapter. If a complaint is filed against a legislator, the department shall notify the appropriate
16 ethics committee established pursuant to 2-2-135. If the complaint against the legislator does not involve an
17 official act, the department shall proceed under the provisions of this chapter.

18 (c) The ~~commissioner department~~ may request additional information from the complainant or the person
19 who is the subject of the complaint to make an initial determination of whether the complaint states a potential
20 violation of this ~~part chapter~~. The department may dismiss a complaint that is frivolous, does not state a potential
21 violation of this chapter, or does not contain sufficient allegations to enable the department to determine whether
22 the complaint states a potential violation of this chapter.

23 ~~(b)(d)~~ The commissioner may dismiss a complaint that is frivolous, does not state a potential violation
24 of this part, or does not contain sufficient allegations to enable the commissioner to determine whether the
25 complaint states a potential violation of this part department shall investigate each complaint not dismissed
26 pursuant to subsection (1)(c) and shall complete the investigation within 6 months after the complaint is filed. The
27 department shall provide a copy of the investigation results to the complainant, the person against whom the
28 complaint was filed, and the supervisor and department head of the person against whom the complaint was filed.
29 If the issues presented in a complaint have been addressed and decided in a prior decision and the ~~commissioner~~
30 ~~department~~ determines that no additional factual development is necessary, the ~~commissioner department~~ may

1 issue a summary decision without holding an informal contested case hearing on the complaint.

2 ~~(c)~~(e) Except as provided in subsection ~~(1)(b)~~ (1)(d), if the ~~commissioner~~ department determines that
3 the complaint states a potential violation of this ~~part chapter~~, the ~~commissioner~~ department shall hold an informal
4 contested case hearing on the complaint as provided in Title 2, chapter 4, part 6. The ~~commissioner~~ department
5 shall issue a decision based upon the record established before the ~~commissioner~~ department.

6 (2) (a) Except as provided in subsection (2)(b), if the ~~commissioner~~ department determines that a
7 violation of this ~~part chapter~~ has occurred, the ~~commissioner~~ department may impose an administrative penalty
8 of not less than ~~\$50~~ \$500 or more than ~~\$1,000~~ \$10,000.

9 (b) If the ~~commissioner~~ department determines that a violation of 2-2-121(4)(b) has occurred, the
10 ~~commissioner~~ department may impose an administrative penalty of not less than ~~\$500~~ \$1,000 or more than
11 ~~\$10,000~~ \$50,000.

12 (c) If the violation was committed by a state employee, the ~~commissioner~~ department may also
13 recommend that the employing state agency discipline the employee. The employing entity of a state employee
14 ~~may shall~~ take disciplinary action against an employee for a violation of this ~~part chapter~~, regardless of whether
15 the ~~commissioner~~ department makes a recommendation for discipline. The ~~commissioner~~ department may
16 assess the costs of the proceeding against the person bringing the charges if the ~~commissioner~~ department
17 determines that a violation did not occur or against the officer or employee if the ~~commissioner~~ department
18 determines that a violation did occur.

19 (3) A party may seek judicial review of the ~~commissioner's~~ department's decision, as provided in chapter
20 4, part 7, of this title, after a hearing, a dismissal, or a summary decision issued pursuant to subsection ~~(1)(b)~~
21 (1)(d).

22 (4) If the department declines to hold a contested case hearing under this section, the person alleging
23 a violation of this chapter may file a civil action in district court seeking a fine of not less than \$500 or more than
24 \$10,000. In an action filed under this subsection, the court may assess the costs and attorney fees against the
25 person bringing the charges if the court determines that a violation did not occur or against the officer or
26 employee if the court determines that a violation did occur. The court may impose sanctions if the court
27 determines that the action was frivolous or intended for harassment.

28 (5) If the department determines that a criminal offense has occurred, the department shall bring criminal
29 charges against the state officer or employee.

30 (6) The state may not pay the cost to defend an individual or a group of individuals accused of a violation

1 of this chapter.

2 (4)(7) Except for records made public in the course of a contested hearing held under subsection (1)
3 and records that are open for public inspection pursuant to Montana law, a complaint and records obtained or
4 prepared by the ~~commissioner~~ department in connection with an investigation or complaint are confidential
5 documents and are not open for public inspection. The complainant and the person who is the subject of the
6 complaint shall maintain the confidentiality of the complaint and any related documents released to the parties
7 by the ~~commissioner~~ department until the ~~commissioner~~ department issues a decision. However, the person who
8 is the subject of a complaint may waive, in writing, the right of confidentiality provided in this subsection. If a
9 waiver is filed with the ~~commissioner~~ department, the complaint and any related documents must be open for
10 public inspection. The ~~commissioner's~~ department's decision issued after a hearing and any settlement before
11 or after the hearing ~~is a~~ are public ~~record~~ records open to inspection.

12 (5)(8) When a complaint is filed, the ~~commissioner~~ department may issue statements or respond to
13 inquiries to confirm that a complaint has been filed, to identify against whom it has been filed, and to describe the
14 procedural aspects and status of the case.

15 (6)(9) The ~~commissioner~~ department may adopt rules to carry out the responsibilities and duties
16 assigned by this ~~part~~ chapter."

17

18 **Section 5.** Section 2-2-144, MCA, is amended to read:

19 **"2-2-144. Enforcement for local government.** (1) Except as provided in subsections (5) and (6), a
20 person alleging a violation of this ~~part~~ chapter by a local government officer or local government employee shall
21 notify the county attorney of the county where the local government is located. The county attorney shall request
22 from the complainant or the person who is the subject of the complaint any information necessary to make a
23 determination concerning the validity of the complaint.

24 (2) If the county attorney determines that the complaint is justified, the county attorney may bring an
25 action in district court seeking a civil fine of not less than ~~\$50~~ \$500 or more than ~~\$1,000~~ \$10,000. If the county
26 attorney determines that the complaint alleges a criminal violation, the county attorney shall bring criminal
27 charges against the officer or employee.

28 (3) If the county attorney declines to bring an action under this section, the person alleging a violation
29 of this ~~part~~ chapter may file a civil action in district court seeking a civil fine of not less than ~~\$50~~ \$500 or more than
30 ~~\$1,000~~ \$10,000. In an action filed under this subsection, the court may assess the costs and attorney fees against

1 the person bringing the charges if the court determines that a violation did not occur or against the officer or
 2 employee if the court determines that a violation did occur. The court may impose sanctions if the court
 3 determines that the action was frivolous or intended for harassment.

4 (4) The employing entity of a local government employee may take disciplinary action against an
 5 employee for a violation of this ~~part~~ chapter.

6 (5) (a) A local government may establish a three-member panel to review complaints alleging violations
 7 of this ~~part~~ chapter by officers or employees of the local government. The local government shall establish
 8 procedures and rules for the panel. The members of the panel may not be officers or employees of the local
 9 government. The panel shall review complaints and may refer to the county attorney complaints that appear to
 10 be substantiated. If the complaint is against the county attorney, the panel shall refer the matter to the
 11 ~~commissioner of political practices~~ department and the complaint must then be processed by the ~~commissioner~~
 12 department pursuant to 2-2-136.

13 (b) In a local government that establishes a panel under this subsection (5), a complaint must be referred
 14 to the panel prior to making a complaint to the county attorney.

15 (6) If a local government review panel has not been established pursuant to subsection (5), a person
 16 alleging a violation of this ~~part~~ chapter by a county attorney shall file the complaint with the ~~commissioner of~~
 17 ~~political practices~~ department pursuant to 2-2-136."

18

19 **Section 6.** Section 2-2-304, MCA, is amended to read:

20 **"2-2-304. Penalty for violation of nepotism law.** A public officer or employee or a member of any
 21 board, bureau, or commission of this state or any political subdivision who, by virtue of the person's office, has
 22 the right, privilege, or ability to make hire an employee, contract for services or products, or appoint any person
 23 to render services to this state or any subdivision of this state and who ~~makes~~ hires an employee, contracts for
 24 services or products, or appoints a person to provide the services or products or enters into any agreement or
 25 promise with any other person or employee or any member of any board, bureau, or commission of any other
 26 department of this state or any of its subdivisions to appoint to any position any person or persons related to ~~the~~
 27 ~~person making the appointment~~ or connected with the person hiring the employee, contracting for services or
 28 products, or making the appointment by consanguinity within the fourth degree or by affinity within the second
 29 degree is guilty of a misdemeanor and upon conviction shall be punished by a fine not less than ~~\$50~~ \$500 or
 30 more than ~~\$1,000~~ \$10,000, by imprisonment in the county jail for not more than 6 months, or both. A penalty

1 under this section is in lieu of any penalty provided for in 2-2-136 or 2-2-144."

2

3 **NEW SECTION. Section 7. Retaliation unlawful.** (1) It is unlawful for a state agency, state officer,
4 public officer, or public employee to retaliate against an individual who files a complaint pursuant to 2-2-136 or
5 to condone or threaten retaliation.

6 (2) For purposes of this section, "retaliate" means to take any of the following actions against an
7 individual because the individual filed a complaint pursuant to 2-2-136:

8 (a) terminate employment;

9 (b) demote;

10 (c) deny overtime, benefits, or promotion;

11 (d) discipline;

12 (e) decline to hire or rehire;

13 (f) threaten or intimidate;

14 (g) reassign to a position that hurts future career prospects; or

15 (h) reduce pay, work hours, or benefits.

16

17 **NEW SECTION. Section 8. Retirement benefit used to pay penalties.** A fine or restitution owed
18 pursuant to this chapter may be paid from any public employee retirement benefit due under the provisions of
19 Title 19 to the person owing the fine or restitution.

20

21 **NEW SECTION. Section 9. Termination from public employment or removal from public office.**

22 A person who has violated a provision of this chapter must immediately be terminated from public employment
23 or removed from public office.

24

25 **NEW SECTION. Section 10. Report to legislature.** (1) (a) The department shall provide a semiannual
26 report to the legislative services division on the complaints filed with the department pursuant to this chapter.
27 Subject to subsection (1)(b), the report must include but is not limited to how many complaints have been filed
28 and, for complaints that have been resolved by the department, the identities of plaintiffs and defendants and the
29 final disposition of the complaints, including the amount of any fine or any settlement negotiated with the
30 department and the cost of enforcement under this section.

1 (b) The department may withhold from the report required under subsection (1)(a) the identity of the
2 plaintiff if the department determines, on a case-by-case basis, that the plaintiff's right to privacy clearly outweighs
3 the public's right to know.

4 (2) On the filing in a district court of a complaint against a public officer or public employee that alleges
5 a violation of a provision of this chapter, the clerk of court shall immediately report the filing to the legislative
6 services division.

7 (3) The legislative services division shall compile the reports required under this section and send a
8 semiannual report by e-mail to each legislator with an e-mail address known to the legislative services division.

9 (4) An alleged violation of this chapter concerning a member of the legislature must immediately be
10 referred to the appropriate ethics committee established under 2-2-135.

11
12 **NEW SECTION. Section 11. Repealer.** The following section of the Montana Code Annotated is
13 repealed:

14 10-1-111. Immunity from liability.

15
16 **NEW SECTION. Section 12. Codification instruction -- instructions to code commissioner.** (1)
17 [Section 7] is intended to be codified as an integral part of Title 2, chapter 2, part 1, and the provisions of Title 2,
18 chapter 2, part 1, apply to [section 7].

19 (2) [Sections 8 through 10] are intended to be codified as an integral part of Title 2, chapter 2, and the
20 provisions of Title 2, chapter 2, apply to [sections 8 through 10].

21 (3) Sections 2-2-136 and 2-2-144 are intended to be renumbered and codified with [sections 8 through
22 10] as a new part in Title 2, chapter 2.

23 - END -