

2-16-601. Short title. This part shall be cited as the "Montana Recall Act".

2-16-602. Definitions. As used in this part, the following definitions apply:

(1) "Political subdivision" means a local government unit including but not limited to a county, city, or town established under authority of Article XI, section 1, of The Constitution of the State of Montana or a school district.

(2) "Public office" means a position of duty, trust, or authority created by the constitution or by the legislature or by a political subdivision through authority conferred by the constitution or the legislature that meets the following criteria:

(a) the position must possess a delegation of a portion of the sovereign power of government to be exercised for the benefit of the public;

(b) the powers conferred and the duties to be discharged must be defined, directly or impliedly, by the constitution, the legislature, or by a political subdivision through legislative authority;

(c) the duties must be performed independently and without control of a superior power other than the law, unless the legislature has created the position and placed it under the general control of a superior office or body; and

(d) the position must have some permanency and continuity and not be only temporary or occasional.

(3) "State-district" means a public service commission district, a legislative representative or senatorial district, or a judicial district.

2-16-603. Officers subject to recall -- grounds for recall. (1) Every person holding a public office of the state or any of its political subdivisions, either by election or appointment, is subject to recall from such office.

(2) A public officer holding an elective office may be recalled by the qualified electors entitled to vote for his successor. A public officer holding an appointive office may be recalled by the qualified electors entitled to vote for the successor or successors of the elective officer or officers who have the authority to appoint a person to that position.

(3) **Physical or mental lack of fitness, incompetence, violation of his oath of office, official misconduct, or conviction of a felony offense enumerated in Title 45 is the only basis for recall.** No person may be recalled for performing a mandatory duty of the office he holds or for not performing any act that, if performed, would subject him to prosecution for official misconduct.

#### Case Notes:

Legal Sufficiency of Petition a Judicial Question: **Under the Montana Recall Act, the legal sufficiency of allegations in a recall petition is a judicial as opposed to a political question and is to be decided by the District Court.** *Foster v. Kovich*, 207 M 139, 673 P2d 1239, 40 St. Rep. 1949 (1983), followed in *Sheehy v. Ferda*, 235 M 63, 765 P2d 722, 45 St. Rep. 2162 (1988).

No "Official Misconduct" Found: The following are not adequate grounds for recall of a mayor: demotion of a police officer, failure to hold an orderly city council meeting, and use of vulgar language. *Foster v. Kovich*, 207 M 139, 673 P2d 1239, 40 St. Rep. 1949 (1983).

Sufficiency of Statement of Reason for Recall: Where recall petition stated the grounds for recall as being official misconduct, without specifying the alleged acts constituting misconduct, the petition is deficient because it does not acquaint the public, whose signatures are requested, with the alleged acts constituting misconduct, nor does it permit the official to respond and defend himself adequately against the allegation of misconduct. *Steadman v. Halland*, 197 M 45, 641 P2d 448, 39 St. Rep. 343 (1982), followed in *Foster v. Kovich*, 207 M 139, 673 P2d 1239, 40 St. Rep. 1949 (1983), and in *Sheehy v. Ferda*, 235 M 63, 765 P2d 722, 45 St. Rep. 2162 (1988).

## Official Misconduct

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

- (a) purposely or negligently fails to perform any mandatory duty as required by law or by a court of competent jurisdiction;
  - (b) knowingly performs an act in his official capacity which he knows is forbidden by law;
  - (c) with the purpose to obtain advantage for himself or another, performs an act in excess of his lawful authority;
  - (d) solicits or knowingly accepts for the performance of any act a fee or reward which he knows is not authorized by law; or
  - (e) knowingly conducts a meeting of a public agency in violation of 2-3-203.
- (2) A public servant convicted of the offense of official misconduct shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.
- (3) The district court shall have exclusive jurisdiction in prosecutions under this section. Any action for official misconduct must be commenced by an information filed after leave to file has been granted by the district court or after a grand jury indictment has been found.
- (4) A public servant who has been charged as provided in subsection (3) may be suspended from his office without pay pending final judgment. Upon final judgment of conviction he shall permanently forfeit his office. Upon acquittal he shall be reinstated in his office and shall receive all backpay.
- (5) This section does not affect any power conferred by law to impeach or remove any public servant or any proceeding authorized by law to carry into effect such impeachment or removal.