

SENATE BILL NO. 252

INTRODUCED BY G. HERTZ

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE CODE OF ETHICS FOR ELECTED OFFICIALS AND GOVERNMENT EMPLOYEES; EXPANDING THE CODE OF ETHICS TO THE JUDICIAL BRANCH, JUDICIAL OFFICERS, JUSTICES, AND JUDGES; REVISING DEFINITIONS; AND AMENDING SECTIONS 2-2-101, 2-2-102, 2-2-103, 2-2-136, AND 2-2-144, MCA."

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

**Section 1.** Section 2-2-102, MCA, is amended to read:

**"2-2-102. Definitions.** As used in this part, 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) (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;

1 (B) clearly serves the public good; and

2 (C) is not lavish or extravagant.

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

5 (b) The term does not include a district court or an entity under the control of the judicial branch of  
6 state government.

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

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

10 (a) an ownership interest in a business;

11 (b) a creditor interest in an insolvent business;

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

13 (d) an ownership interest in real property;

14 (e) a loan or other debtor interest; or

15 (f) a directorship or officership in a business.

16 (7) "Public employee" means:

17 (a) any temporary or permanent employee of the state, including an employee of the judicial  
18 branch;

19 (b) any temporary or permanent employee of a local government;

20 (c) a member of a quasi-judicial board or commission or of a board, commission, or committee  
21 with rulemaking authority; and

22 (d) a person under contract to the state.

23 (8) "Public information" has the meaning provided in 2-6-1002.

24 (9) (a) "Public officer" includes any state officer and any elected officer of a local government.

25 (b) For the purposes of 67-11-104, the term also includes a commissioner of an airport authority.

26 (10) "Special district" means a unit of local government, authorized by law to perform a single  
27 function or a limited number of functions. The term includes but is not limited to conservation districts, water  
28 districts, weed management districts, irrigation districts, fire districts, community college districts, hospital

1 districts, sewer districts, and transportation districts. The term also includes any district or other entity formed by  
2 interlocal agreement.

3 (11) (a) "State agency" includes:

4 (i) the state;

5 (ii) the legislature and its committees;

6 (iii) all executive departments, boards, commissions, committees, bureaus, and offices;

7 (iv) the university system; and

8 (v) all independent commissions and other establishments of the state government.

9 (b) The term does not include the judicial branch.

10 (12) "State officer" includes all elected officers and directors of the executive branch of state  
11 government as defined in 2-15-102 and all judicial officers, justices, district court judges, and judges of the  
12 judicial branch of state government."

13

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

15 **"2-2-101. Statement of purpose.** The purpose of this part is to set forth a code of ethics prohibiting  
16 conflict between public duty and private interest as required by the constitution of Montana. This code  
17 recognizes distinctions between judges, legislators, judicial officers, other officers and employees of state  
18 government, and officers and employees of local government and prescribes some standards of conduct  
19 common to all categories and some standards of conduct adapted to each category. The provisions of this part  
20 recognize that some actions are conflicts per se between public duty and private interest while other actions  
21 may or may not pose such conflicts depending upon the surrounding circumstances."

22

23 **Section 3.** Section 2-2-103, MCA, is amended to read:

24 **"2-2-103. Public trust -- public duty.** (1) The holding of public office or employment is a public trust,  
25 created by the confidence that the electorate reposes in the integrity of public officers, legislators, and public  
26 employees. A judicial officer, public officer, judge, legislator, or public employee shall carry out the individual's  
27 duties for the benefit of the people of the state.

28 (2) A judicial officer, public officer, judge, legislator, or public employee whose conduct departs

1 from the person's public duty is liable to the people of the state and is subject to the penalties provided in this  
2 part for abuse of the public's trust.

3 (3) This part sets forth various rules of conduct, the transgression of any of which is a violation of  
4 public duty, and various ethical principles, the transgression of any of which must be avoided.

5 (4) (a) The enforcement of this part for:

6 (i) judicial officers, state officers, judges, legislators, and state employees is provided for in 2-2-  
7 136;

8 (ii) legislators, involving legislative acts, is provided for in 2-2-135 and for all other acts is provided  
9 for in 2-2-136;

10 (iii) local government officers and employees is provided for in 2-2-144.

11 (b) Any money collected in the civil actions that is not reimbursement for the cost of the action  
12 must be deposited in the general fund of the unit of government."  
13

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

15 **"2-2-136. Enforcement for judicial officers, state officers, legislators, and state employees --**  
16 **referral of complaint involving county attorney.** (1) (a) A person alleging a violation of this part by a state

17 officer, legislator, or state employee may file a complaint with the commissioner of political practices. The  
18 commissioner does not have jurisdiction for a complaint concerning a judicial officer if a judicial act is involved

19 in the complaint or a legislator if a legislative act is involved in the complaint. The commissioner also has  
20 jurisdiction over complaints against a county attorney that are referred by a local government review panel

21 pursuant to 2-2-144 or filed by a person directly with the commissioner pursuant to 2-2-144(6). If a complaint is  
22 filed against the commissioner or another individual employed in the office of the commissioner, the complaint

23 must be resolved in the manner provided for in 13-37-111(5).

24 (b) The commissioner may request additional information from the complainant or the person who  
25 is the subject of the complaint to make an initial determination of whether the complaint states a potential

26 violation of this part.

27 (c) The commissioner may dismiss a complaint that is frivolous, does not state a potential violation  
28 of this part, or does not contain sufficient allegations to enable the commissioner to determine whether the

1 complaint states a potential violation of this part.

2 (d) When a complaint is filed, the commissioner may issue statements or respond to inquiries to  
3 confirm that a complaint has been filed, to identify against whom it has been filed, and to describe the  
4 procedural aspects and status of the case.

5 (2) (a) If the commissioner determines that the complaint states a potential violation of this part,  
6 the commissioner shall hold an informal contested case hearing on the complaint as provided in Title 2, chapter  
7 4, part 6. However, if the issues presented in a complaint have been addressed and decided in a prior decision  
8 and the commissioner determines that no additional factual development is necessary, the commissioner may  
9 issue a summary decision without holding an informal contested case hearing on the complaint.

10 (b) Except as provided in 2-3-203, an informal contested case proceeding must be open to the  
11 public. Except as provided in Title 2, chapter 6, part 10, documents submitted to the commissioner for the  
12 informal contested case proceeding are presumed to be public information.

13 (c) The commissioner shall issue a decision based on the record established before the  
14 commissioner. The decision issued after a hearing is public information open to inspection.

15 (3) (a) Except as provided in subsection (3)(b), if the commissioner determines that a violation of  
16 this part has occurred, the commissioner may impose an administrative penalty of not less than \$50 or more  
17 than \$1,000.

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

20 (c) If the violation was committed by a state employee, the commissioner may also recommend  
21 that the employing state agency discipline the employee. The employing entity of a state employee may take  
22 disciplinary action against an employee for a violation of this part, regardless of whether the commissioner  
23 makes a recommendation for discipline.

24 (d) The commissioner may assess the costs of the proceeding against the person bringing the  
25 charges if the commissioner determines that a violation did not occur or against the officer or employee if the  
26 commissioner determines that a violation did occur.

27 (4) A party may seek judicial review of the commissioner's decision, as provided in Title 2, chapter  
28 4, part 7, after a hearing, a dismissal, or a summary decision issued pursuant to this section.

1 (5) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this  
2 part."

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

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

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

14 (3) If the county attorney declines to bring an action under this section, the person alleging a  
15 violation of this part may file a civil action in district court seeking a civil fine of not less than \$50 or more than  
16 \$1,000. In an action filed under this subsection, the court may assess the costs and attorney fees against the  
17 person bringing the charges if the court determines that a violation did not occur or against the officer or  
18 employee if the court determines that a violation did occur. The court may impose sanctions if the court  
19 determines that the action was frivolous or intended for harassment.

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

22 (5) (a) A local government may establish a three-member panel to review complaints alleging  
23 violations of this part by officers or employees of the local government. The local government shall establish  
24 procedures and rules for the panel. The members of the panel may not be officers or employees of the local  
25 government. The panel shall review complaints and may refer to the county attorney complaints that appear to  
26 be substantiated. If the complaint is against the county attorney, the panel shall refer the matter to the  
27 commissioner of political practices and the complaint must then be processed by the commissioner pursuant to  
28 2-2-136.

