

HOUSE BILL NO. 202

INTRODUCED BY K. WAGONER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO PUBLIC OFFICERS AND
5 EMPLOYEES; ~~REQUIRING~~ ALLOWING PUBLIC OFFICERS AND EMPLOYEES TO REPORT CERTAIN
6 MATTERS OF PUBLIC CONCERN; ~~CREATING THE OFFENSE OF PUBLIC OBSTRUCTION~~ A CIVIL PENALTY
7 FOR A PERSON THAT SUPPRESSES A PUBLIC EMPLOYEE FROM COMMUNICATING CERTAIN MATTERS
8 OF PUBLIC CONCERN WITH A LEGISLATOR; AND PROVIDING PENALTIES; ~~AND AMENDING SECTION~~
9 ~~2-2-102, MCA.~~"

10
11 WHEREAS, every public officer or employee has a right to speak to any legislator regarding state
12 business about ~~which the public officer or employee has a concern, including alleged misconduct, fraud, waste,~~
13 ~~abuse, or other matters~~ A MATTER of public concern; AND

14 WHEREAS, every public employee ~~reporting alleged misconduct, fraud, waste, abuse, or other matters~~
15 DISCUSSING A MATTER of public concern has a right to do so without fear of reprisal.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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19 NEW SECTION. Section 1. ~~Public obstruction~~ OBSTRUCTION OF COMMUNICATION WITH LEGISLATOR.

20 (1) A person who exercises supervision, management, or control over a public employee ~~commits the offense~~
21 ~~of public obstruction if the person purposely or knowingly takes~~ MAY NOT INTENTIONALLY TAKE any action to impede
22 a public employee from communicating in good faith with a legislator as defined in 5-7-102 about ~~possible~~
23 ~~misconduct, fraud, waste, abuse, or other matters~~ A MATTER of public concern.

24 ~~(2) A person convicted of the offense of public obstruction shall be fined not to exceed \$20,000 or be~~
25 ~~imprisoned for a term not to exceed 5 years, or both.~~

26 (2) (A) A PUBLIC EMPLOYEE INJURED BY A VIOLATION OF THIS SECTION MAY BRING A CIVIL ACTION IN A COURT
27 OF COMPETENT JURISDICTION AGAINST THE PERSON WHO INTENTIONALLY IMPEDED THE PUBLIC EMPLOYEE'S
28 COMMUNICATION WITH A LEGISLATOR ABOUT A MATTER OF PUBLIC CONCERN. EXHAUSTION OF ADMINISTRATIVE REMEDIES
29 IS NOT A PREREQUISITE TO FILING AN ACTION UNDER THIS SECTION.

30 (B) A PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION IS LIABLE TO THE PUBLIC EMPLOYEE FOR A CIVIL



1 PENALTY NOT TO EXCEED \$5,000 FOR EACH VIOLATION PLUS DAMAGES, COSTS, AND ATTORNEY FEES.

2 (3) THIS SECTION MAY NOT BE CONSTRUED TO ALLOW PUBLIC DISCLOSURE OF CONFIDENTIAL INFORMATION AS
3 THAT TERM IS DEFINED IN 2-6-1002.

4 ~~(3)~~(4) For the purposes of this section, "public employee" means any temporary or permanent employee
5 of a local government or of the state as defined by [section 2] or a person under contract to a local government
6 or to the state.

7
8 NEW SECTION. Section 2. Duty ABILITY to report. (1) An officer or employee of a local government
9 or of the state ~~has an obligation to~~ MAY report alleged misconduct, fraud, waste, or abuse to the appropriate
10 governmental body, ~~or employer, OR LEGISLATOR.~~

11 (2) An officer or employee of a local government or of the state may not be penalized for violations of
12 this section.

13 (3) For the purposes of this section, the following definitions apply:

14 (a) "Employee" includes any temporary or permanent employee or a person under contract to the state
15 or a local government.

16 (b) "Local government" includes a county, a consolidated government, an incorporated city or town, a
17 school district, or a special district.

18 (c) "Officer" includes any elected or appointed official.

19 (d) "State" means the executive, judicial, and legislative branches of government.

20
21 ~~Section 3. Section 2-2-102, MCA, is amended to read:~~

22 ~~"2-2-102. Definitions. As Except as otherwise provided, as used in this part, the following definitions~~
23 ~~apply:~~

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

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

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

29 ~~(b) The term does not include:~~

30 ~~(i) a gift that is not used and that, within 30 days after receipt, is returned to the donor or delivered to a~~

- 1 charitable organization or the state and that is not claimed as a charitable contribution for federal income tax
2 purposes;
- 3 ~~—— (ii) food and beverages consumed on the occasion when participation in a charitable, civic, or community
4 event bears a relationship to the public officer's or public employee's office or employment or when the officer
5 or employee is in attendance in an official capacity;~~
- 6 ~~—— (iii) educational material directly related to official governmental duties;~~
- 7 ~~—— (iv) an award publicly presented in recognition of public service; or~~
- 8 ~~—— (v) educational activity that:~~
- 9 ~~—— (A) does not place or appear to place the recipient under obligation;~~
- 10 ~~—— (B) clearly serves the public good; and~~
- 11 ~~—— (C) is not lavish or extravagant.~~
- 12 ~~—— (4) "Local government" means a county, a consolidated government, an incorporated city or town, a
13 school district, or a special district.~~
- 14 ~~—— (5) "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval, or
15 other action, including inaction, that involves the use of discretionary authority.~~
- 16 ~~—— (6) "Private interest" means an interest held by an individual that is:~~
- 17 ~~—— (a) an ownership interest in a business;~~
- 18 ~~—— (b) a creditor interest in an insolvent business;~~
- 19 ~~—— (c) an employment or prospective employment for which negotiations have begun;~~
- 20 ~~—— (d) an ownership interest in real property;~~
- 21 ~~—— (e) a loan or other debtor interest; or~~
- 22 ~~—— (f) a directorship or officership in a business.~~
- 23 ~~—— (7) "Public employee" means:~~
- 24 ~~—— (a) any temporary or permanent employee of the state;~~
- 25 ~~—— (b) any temporary or permanent employee of a local government;~~
- 26 ~~—— (c) a member of a quasi-judicial board or commission or of a board, commission, or committee with
27 rulemaking authority; and~~
- 28 ~~—— (d) a person under contract to the state.~~
- 29 ~~—— (8) (a) "Public officer" includes any state officer and any elected officer of a local government.~~
- 30 ~~—— (b) For the purposes of 67-11-104, the term also includes a commissioner of an airport authority.~~

1 ~~(9) "Special district" means a unit of local government, authorized by law to perform a single function or~~
 2 ~~a limited number of functions. The term includes but is not limited to conservation districts, water districts, weed~~
 3 ~~management districts, irrigation districts, fire districts, community college districts, hospital districts, sewer~~
 4 ~~districts, and transportation districts. The term also includes any district or other entity formed by interlocal~~
 5 ~~agreement.~~

6 ~~(10) (a) "State agency" includes:~~

7 ~~(i) the state;~~

8 ~~(ii) the legislature and its committees;~~

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

10 ~~(iv) the university system; and~~

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

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

13 ~~(11) "State officer" includes all elected officers and directors of the executive branch of state government~~
 14 ~~as defined in 2-15-102."~~

15
 16 ~~NEW SECTION. Section 4. Codification instruction. (1) [Section 1] is intended to be codified as an~~
 17 ~~integral part of Title 45, chapter 7, part 5, and the provisions of Title 45, chapter 7, part 5, apply to [section 1].~~

18 ~~(2) [Section 2] is intended to be codified as an integral part of Title 2, chapter 2, part 1, and the provisions~~
 19 ~~of Title 2, chapter 2, part 1, apply to [section 2].~~

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 21 ~~NEW SECTION. SECTION 3. CODIFICATION INSTRUCTION. (1) [SECTIONS 1 AND 2] ARE INTENDED TO BE~~
 22 ~~CODIFIED AS AN INTEGRAL PART OF TITLE 2, CHAPTER 2, AND THE PROVISIONS OF TITLE 2, CHAPTER 2, APPLY TO~~
 23 ~~[SECTIONS 1 AND 2].~~

24 ~~(2) [SECTIONS 1 AND 2] ARE INTENDED TO BE CODIFIED AS A NEW PART IN TITLE 2, CHAPTER 2.~~

25 ~~- END -~~