

## 1 SENATE BILL NO. 387

2 INTRODUCED BY DEBBY BARRETT

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PROVISIONS RELATED TO THE  
 5 ENFORCEMENT OF CAMPAIGN PRACTICES LAWS; REQUIRING THE POLITICAL PRACTICES  
 6 COMMISSION TO CONDUCT ADMINISTRATIVE CONTESTED CASE HEARINGS CONCERNING CAMPAIGN  
 7 PRACTICE VIOLATIONS; REVISING THE COMMISSIONER OF POLITICAL PRACTICES'S AUTHORITY,  
 8 DUTIES, APPOINTMENT, TERM OF OFFICE, SALARY DETERMINATION, AND QUALIFICATIONS;  
 9 CONFORMING PROVISIONS ON CORPORATE CONTRIBUTIONS TO CASE LAW; PROVIDING  
 10 NOTIFICATION REQUIREMENTS; REVISING PENALTIES; PROVIDING THAT COUNTY ATTORNEYS MAY  
 11 PROSECUTE ONLY CRIMINAL VIOLATIONS OF CAMPAIGN PRACTICE LAWS; REQUIRING THAT AN  
 12 ALLEGED CRIMINAL VIOLATION BY A COUNTY ATTORNEY BE REFERRED TO THE ATTORNEY  
 13 GENERAL; AMENDING SECTIONS 13-35-226, 13-35-227, 13-35-403, 13-37-101, 13-37-102, 13-37-103,  
 14 13-37-104, 13-37-106, 13-37-107, 13-37-111, 13-37-113, 13-37-121, 13-37-124, 13-37-130, 13-37-131, AND  
 15 13-37-210, MCA; REPEALING SECTIONS 13-37-122, 13-37-128, AND 13-37-129, MCA; AND PROVIDING AN  
 16 IMMEDIATE EFFECTIVE DATE."

17

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

19

20 **NEW SECTION. Section 1. Commissioner to dismiss or refer complaint to political practices**  
 21 **commission.** (1) The commissioner may dismiss a complaint made pursuant to Title 13, chapter 35, or this  
 22 chapter if the commissioner determines that the complaint does not have merit or is insignificant.

23 (2) Any complaint that is not dismissed must be referred within 6 months to the political practices  
 24 commission for an administrative action under [section 3].

25

26 **NEW SECTION. Section 2. Political practices commission -- membership -- compensation.** (1)  
 27 There is a political practices commission that consists of three members appointed by the governor, subject to  
 28 confirmation by a majority of the senate, as follows:

29 (a) one member appointed from a list of three nominees submitted by the executive committee of the  
 30 Montana state democratic party;

1 (b) one member appointed from a list of three nominees submitted by the executive committee of the  
2 Montana state republican party; and

3 (c) one member appointed from a list of three nominees submitted selected by the members appointed  
4 under subsections (1)(a) and (1)(b).

5 (2) Commission members shall serve 4-year terms.

6 (3) Commission members are entitled to compensation and reimbursement for expenses as provided  
7 in 2-15-122.

8  
9 **NEW SECTION. Section 3. Contested case hearings -- penalties -- judicial review -- writ of**

10 **mandate.** (1) The commission shall dismiss, refer to the county attorney for possible criminal prosecution  
11 pursuant to 13-37-124, or conduct an administrative contested case hearing on any matter referred to the  
12 commission by the commissioner.

13 (2) All contested case hearings under this section must be conducted in accordance with the provisions  
14 of Title 2, chapter 4, part 6, except as provided in this section.

15 (3) The office of the attorney general or an attorney for the commissioner of political practices hired  
16 pursuant to 13-37-113 shall prosecute the matter. The person accused of a violation may be represented by  
17 private counsel.

18 (4) (a) If a majority of the commission members find that the respondent is guilty of the violation, the  
19 commission may impose an administrative penalty of up to \$750 for each violation, except that if the violation  
20 concerned an unlawful contribution or expenditure, the administrative penalty may be up to \$750 or three times  
21 the amount of the unlawful contribution or expenditure, whichever is greater.

22 (b) If the commission unanimously agrees that the violation was egregious, the commission may require  
23 the respondent to pay for the cost of the hearing.

24 (5) The commission's ruling is subject to judicial review as provided in Title 2, chapter 4, part 7.

25 (6) If the commission fails to hold a contested case hearing within 6 months of the date on which the  
26 commissioner referred the matter to the commission, the complainant may, within 90 days after expiration of the  
27 6-month period, seek a writ of mandate from the district court in the first judicial district to compel the commission  
28 to fulfill its duties under this section.

29

30 **Section 4.** Section 13-35-226, MCA, is amended to read:

1           **"13-35-226. Unlawful acts of employers and employees.** (1) It is unlawful for any employer, in paying  
 2 employees the salary or wages due them, to include with their pay the name of any candidate or any political  
 3 mottoes, devices, or arguments containing threats or promises, express or implied, calculated or intended to  
 4 influence the political opinions or actions of the employees.

5           (2) It is unlawful for an employer to exhibit in a place where the employer's workers or employees may  
 6 be working any handbill or placard containing:

7           (a) any threat, promise, notice, or information that, in case any particular ticket or political party,  
 8 organization, or candidate is elected:

9           (i) work in the employer's place or establishment will cease, in whole or in part, or will be continued or  
 10 increased;

11           (ii) the employer's place or establishment will be closed; or

12           (iii) the salaries or wages of the workers or employees will be reduced or increased; or

13           (b) other threats or promises, express or implied, intended or calculated to influence the political opinions  
 14 or actions of the employer's workers or employees.

15           (3) A person may not coerce, command, or require a public employee to support or oppose any political  
 16 committee, the nomination or election of any person to public office, or the passage of a ballot issue.

17           (4) A public employee may not solicit support for or opposition to any political committee, the nomination  
 18 or election of any person to public office, or the passage of a ballot issue while on the job or at the place of  
 19 employment. However, subject to 2-2-121, this section does not restrict the right of a public employee to perform  
 20 activities properly incidental to another activity required or authorized by law or to express personal political views.

21           (5) A person who violates this section is liable in ~~a civil~~ an administrative action ~~authorized by 13-37-128,~~  
 22 pursuant to [section 3] or a criminal action brought by ~~the commissioner of political practices or a county attorney~~  
 23 pursuant to 13-37-124 and 13-37-125."

24

25           **Section 5.** Section 13-35-227, MCA, is amended to read:

26           **"13-35-227. Prohibited contributions from corporations.** (1) A corporation may not make a  
 27 contribution ~~or an expenditure in connection with~~ to a candidate or a political committee ~~that supports or opposes~~  
 28 ~~a candidate or a political party.~~

29 ~~— (2) A person, candidate, or political committee may not accept or receive a corporate contribution~~  
 30 ~~described in subsection (1).~~

1 ~~\_\_\_\_\_ (3) This section does not prohibit the establishment or administration of a separate, segregated fund to~~  
 2 ~~be used for making political contributions or expenditures if the fund consists only of voluntary contributions~~  
 3 ~~solicited from an individual who is a shareholder, employee, or member of the corporation.~~

4 ~~(4)(2) A person who violates this section is subject to the civil penalty provisions of 13-37-128 an~~  
 5 ~~administrative action pursuant to [section 3]."~~

6

7 **Section 6.** Section 13-35-403, MCA, is amended to read:

8 **"13-35-403. Penalties.** A person who violates 13-35-402 is ~~liable in a civil action pursuant to 13-37-128~~  
 9 ~~subject to an administrative action pursuant to [section 3]."~~

10

11 **Section 7.** Section 13-37-101, MCA, is amended to read:

12 **"13-37-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the  
 13 following definitions apply:

14 ~~(1) "Commission" means the political practices commission established in [section 2].~~

15 ~~(1)(2) "Commissioner" means the commissioner of political practices created by 13-37-102.~~

16 ~~(2)(3) "Public office" has the meaning provided in 13-1-101.~~

17 ~~(3)(4) "Recusal" means disqualification from a matter by reason of prejudice or conflict of interest.~~

18 ~~(4)(5) "Relative" means a family member who is within the second degree of consanguinity or affinity to~~  
 19 ~~the commissioner."~~

20

21 **Section 8.** Section 13-37-102, MCA, is amended to read:

22 **"13-37-102. Creation of office -- nomination panel -- removal.** (1) There is a commissioner of political  
 23 practices who is appointed by the governor, subject to confirmation by a majority of the senate, from a list of three  
 24 nominees submitted by the nomination panel provided for in subsection (2).

25 ~~(2) A four-member selection committee five-member nomination panel composed of the speaker of the~~  
 26 ~~house, the president of the senate, and the minority leaders of both houses of the legislature, and a fifth member~~  
 27 ~~selected by a majority of the other four shall submit to the governor a list of not less than two or more than five~~  
 28 ~~three names of individuals for the governor's consideration. A majority of the members of the selection committee~~  
 29 ~~nomination panel shall agree upon each nomination.~~

30 ~~(2)(3) The individual selected to serve as commissioner may be removed by the governor prior to the~~

1 expiration of the term only for incompetence, malfeasance, or neglect of duty. The governor's decision to remove  
2 the commissioner must be stated in writing, and the sufficiency of the governor's stated causes for removing the  
3 commissioner is subject to judicial review."  
4

5 **Section 9.** Section 13-37-103, MCA, is amended to read:

6 "**13-37-103. Term of office.** Subject to the provisions of 13-37-104, the individual selected to serve as  
7 commissioner is appointed for a ~~6-year~~ 4-year term and may not be reappointed to serve as commissioner."  
8

9 **Section 10.** Section 13-37-104, MCA, is amended to read:

10 "**13-37-104. Vacancy.** (1) If for any reason a vacancy occurs in the position of commissioner, a  
11 successor must be appointed within ~~30~~ 60 days as provided in 13-37-102(1) to serve out the unexpired term.  
12 Each ~~nomination~~ appointment must be confirmed by the senate, but a nomination made while the senate is not  
13 in session is effective as an appointment until the end of the next session.

14 (2) An individual who is selected to serve out the unexpired term of a preceding commissioner and who  
15 has served ~~3~~ 2 years or more of an unexpired term is not eligible for reappointment.

16 (3) An individual who is selected to serve out the unexpired term of a preceding commissioner and who  
17 has served less than ~~3~~ 2 years may be reappointed for a ~~6-year~~ the term as provided in 13-37-102(1)."  
18

19 **Section 11.** Section 13-37-106, MCA, is amended to read:

20 "**13-37-106. Salary.** (1) The commissioner of political practices is entitled to receive a salary within the  
21 pay band, as defined in 2-18-101, determined by the department of administration as provided in subsection (4).

22 (2) The commissioner is also entitled to longevity, expense reimbursement, leave, insurance, and other  
23 benefits provided to classified state employees under Title 2, chapter 18.

24 (3) The salary of the commissioner may not be reduced during the term for which the commissioner is  
25 appointed.

26 (4) The department of administration shall determine the appropriate occupation and pay band for the  
27 commissioner of political practices in the same manner that it determines the occupation and pay band for  
28 employees in state government pursuant to Title 2, chapter 18.

29 (5) The ~~governor~~ department of administration shall set the salary of the commissioner of political  
30 practices within the pay band established by the department of administration.

1 (6) The commissioner of political practices must receive pay adjustments consistent with those required  
2 by the legislature for state employees in 2-18-303 and 2-18-304."

3  
4 **Section 12.** Section 13-37-107, MCA, is amended to read:  
5 **"13-37-107. Commissioner of political practices -- qualifications.** The individual appointed to serve  
6 as commissioner:

7 (1) must be a citizen of the United States and a resident of Montana as provided in 13-1-112; ~~and~~  
8 (2) on the date of appointment, must be registered to vote in Montana; and  
9 (3) may not have a relationship, association, or employment history that would cause the individual, if  
10 appointed as commissioner, to have to be recused in presently identifiable instances, such as those related to  
11 a currently serving elected official, a current candidate, campaign manager, or party director, or a currently active  
12 political organization, that are or could be the subject of a complaint during the commissioner's term."

13  
14 **Section 13.** Section 13-37-111, MCA, is amended to read:  
15 **"13-37-111. Investigative Commissioner's investigative powers and duties -- recusal.** (1) Except  
16 as provided in 13-35-240, the commissioner is responsible for investigating all of the alleged violations of the  
17 election laws contained in Title 13, chapter 35, of this title or this chapter and ~~in conjunction with the commission~~  
18 and the county attorneys ~~is~~ are responsible for enforcing these election laws.

19 (2) The commissioner may:  
20 (a) investigate all statements filed pursuant to the provisions of Title 13, chapter 35, of this title or this  
21 chapter and shall investigate alleged failures to file any statement or the alleged falsification of any statement filed  
22 pursuant to the provisions of chapter 35 of this title or this chapter. ~~Upon the submission of a written complaint~~  
23 ~~by any individual, the~~ The commissioner shall investigate any other alleged written complaint by an individual  
24 alleging that the individual has been identifiably and specifically harmed by a violation of the provisions of Title  
25 13, chapter 35, of this title, this chapter, or any rule adopted pursuant to chapter 35 of this title or this chapter.

26 (b) inspect any records, accounts, or books that must be kept pursuant to the provisions of Title 13,  
27 chapter 35, of this title or this chapter that are held by any political committee or candidate, as long as the  
28 inspection is made during reasonable office hours; and

29 (c) administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and  
30 require the production of any books, papers, correspondence, memoranda, bank account statements of a political

1 committee or candidate, or other records that are relevant or material for the purpose of conducting any  
2 investigation pursuant to the provisions of Title 13, chapter 35, of this title or this chapter.

3 (3) If the commissioner determines that considering a matter would give rise to the appearance of  
4 impropriety or a conflict of interest, the commissioner is recused from participating in the matter.

5 (4) (a) If the commissioner is recused pursuant to this section, the commissioner shall appoint a deputy;  
6 subject to subsection (4)(b).

7 (b) The deputy:

8 (i) may not be an employee of the office of the commissioner;

9 (ii) must have the same qualifications as specified for the commissioner in 13-37-107;

10 (iii) with respect to only the specific matter from which the commissioner is recused, has the same  
11 authority, duties, and responsibilities as the commissioner would have absent the recusal; and

12 (iv) may not exercise any powers of the office that are not specifically related to the matter for which the  
13 deputy is appointed.

14 (5) The appointment of the deputy is effectuated by a contract between the commissioner and the  
15 deputy. The contract must specify the deputy's term of appointment, which must be temporary, the matter  
16 assigned to the deputy, the date on which the matter assigned must be concluded by the deputy, and any other  
17 items relevant to the deputy's appointment, powers, or duties."

18

19 **Section 14.** Section 13-37-113, MCA, is amended to read:

20 "**13-37-113. Hiring of attorneys --prosecutions.** The commissioner may hire or retain attorneys who  
21 are properly licensed to practice before the supreme court of the state of Montana to prosecute civil violations  
22 of Title 13, chapter 35, of this title or this chapter pursuant to [section 3]. ~~Any attorney retained or hired shall~~  
23 ~~exercise the powers of a special attorney general, and the attorney may prosecute, subject to the control and~~  
24 ~~supervision of the commissioner and the provisions of 13-35-240, 13-37-124, and 13-37-125, any criminal or civil~~  
25 ~~action arising out of a violation of any provision of chapter 35 of this title or this chapter. All prosecutions must~~  
26 ~~be brought in the state district court for the county in which a violation has occurred or in the district court for~~  
27 ~~Lewis and Clark County. The authority to prosecute as prescribed by this section includes the authority to:~~

28 ~~———(1) institute proceedings for the arrest of persons charged with or reasonably suspected of criminal~~  
29 ~~violations of chapter 35 of this title or this chapter;~~

30 ~~———(2) attend and give advice to a grand jury when cases involving criminal violations of chapter 35 of this~~

1 title or this chapter are presented;  
 2 ~~—— (3) draw and file indictments, informations, and criminal complaints;~~  
 3 ~~—— (4) prosecute all actions for the recovery of debts, fines, penalties, or forfeitures accruing to the state or~~  
 4 ~~county from persons convicted of violating chapter 35 of this title or this chapter; and~~  
 5 ~~—— (5) do any other act necessary to successfully prosecute a violation of any provision of chapter 35 of this~~  
 6 ~~title or this chapter."~~

7

8 **Section 15.** Section 13-37-121, MCA, is amended to read:

9 **"13-37-121. Inspection of statements and reports -- issuance of orders of noncompliance --**

10 **referral to commission.** (1) Each statement and report filed with the commissioner during an election or within  
 11 60 days after the election must be inspected within 20 days after the statement or report is filed. Intermediate  
 12 Saturdays, Sundays, and holidays must be excluded in the computation of time under this section. If a person  
 13 has not satisfied the provisions of this chapter, the commissioner shall immediately notify the person of the  
 14 noncompliance. Notification by the commissioner may be accomplished by written or electronic communication  
 15 or by telephone. The commissioner shall also provide the person with proof of the noncompliance. If the person  
 16 fails to comply after the notification, the commissioner shall issue an order of noncompliance as provided in this  
 17 section.

18 (2) An order of noncompliance may be issued when:

19 (a) upon examination of the official ballot, it appears that the person has failed to file a statement or  
 20 report as required by this chapter or that a statement or report filed by a person does not conform to law; or

21 (b) it is determined that a statement or report filed with the commissioner does not conform to the  
 22 requirements of this chapter or that a person has failed to file a statement or report required by law.

23 (3) If an order of noncompliance is issued during a campaign period or within 60 days after an election,  
 24 a candidate or political committee shall submit the necessary information within 5 days after receiving the order  
 25 of noncompliance. Upon ~~a~~ the person's failure to submit the required information within the time specified, the  
 26 ~~appropriate county attorney or the commissioner may initiate a civil or criminal action pursuant to the procedures~~  
 27 ~~outlined in 13-37-124 and 13-37-125~~ commissioner shall refer the matter to the commission for an administrative  
 28 action under [section 3].

29 (4) If an order of noncompliance is issued during any period other than that described in subsection (3),  
 30 a candidate or political committee shall submit the necessary information within 10 days after receiving the order



1 of noncompliance. Upon ~~a~~ the person's failure to submit the required information within the time specified, the  
 2 appropriate county attorney or the commissioner shall initiate a civil or criminal action pursuant to the procedures  
 3 outlined in ~~13-37-124 and 13-37-125~~ commissioner shall refer the matter to the commission for an administrative  
 4 action under [section 3].

5 ~~———— (5) After a complaint is filed with the commissioner pursuant to 13-37-111, the procedure described in~~  
 6 ~~this section regarding the provision of notice and issuance of orders of noncompliance is not a prerequisite to~~  
 7 ~~initiation of any other administrative or judicial action authorized under chapter 35 of this title or this chapter."~~

8

9 **Section 16.** Section 13-37-124, MCA, is amended to read:

10 **"13-37-124. Consultation and cooperation with county attorney -- criminal prosecution.** (1) Except  
 11 as provided in 13-35-240, whenever the ~~commissioner~~ commission determines that there appears to be sufficient  
 12 evidence to justify a ~~civil or~~ criminal prosecution under Title 13, chapter 35, of this title or this chapter, the  
 13 ~~commissioner~~ commission shall notify the county attorney of the county in which the alleged violation occurred  
 14 and shall arrange to transmit to the county attorney all information relevant to the alleged violation. ~~If the county~~  
 15 ~~attorney fails to initiate the appropriate civil or criminal action within 30 days after receiving notification of the~~  
 16 ~~alleged violation, the commissioner may then initiate the appropriate legal action.~~

17 (2) A county attorney may, at any time prior to the expiration of the 30-day time period specified in  
 18 ~~subsection (1), waive the right to prosecute, and the waiver authorizes the commissioner to initiate the~~  
 19 ~~appropriate civil or criminal action~~ shall notify the commission within 30 days of a referral under this section if the  
 20 county attorney decides not to proceed with a criminal prosecution.

21 (3) The provisions of subsection (1) do not apply to a situation in which the alleged violation has been  
 22 committed by the county attorney ~~of a county~~. In this instance, the ~~commissioner is authorized to directly~~  
 23 ~~prosecute any alleged violation of chapter 35 of this title or this chapter~~ commission shall refer the matter to the  
 24 attorney general.

25 ~~———— (4) If a prosecution is undertaken by the commissioner, all court costs associated with the prosecution~~  
 26 ~~must be paid by the state of Montana, and all fines and forfeitures imposed pursuant to a prosecution by the~~  
 27 ~~commissioner, except those paid to or imposed by a justice's court, must be deposited in the state general fund."~~

28

29 **Section 17.** Section 13-37-130, MCA, is amended to read:

30 **"13-37-130. Limitation of action.** ~~An action may not be brought under 13-37-128 and 13-37-129~~ The

1 commission may not initiate an administrative action under [section 3] more than ~~4~~ 3 years after the occurrence  
 2 of the facts that give rise to the action. No more than one judgment against a particular ~~defendant~~ respondent  
 3 may be ~~had imposed based~~ on a single ~~state set~~ of facts. The ~~civil action created in 13-37-128 and 13-37-129~~  
 4 administrative action under [section 3] is the exclusive remedy for violation of the contribution, expenditure, and  
 5 reporting provisions of this chapter. These provisions are not subject to the misdemeanor penalties of 13-35-103  
 6 but may be ~~a ground grounds~~ for ~~contest of~~ contesting an election or removal from office as provided in  
 7 13-35-106(3) and Title 13, chapter 36."

8

9 **Section 18.** Section 13-37-131, MCA, is amended to read:

10 **"13-37-131. Misrepresentation of voting record -- political civil libel.** (1) It is unlawful for a person  
 11 to misrepresent a candidate's public voting record or any other matter that is relevant to the issues of the  
 12 campaign with knowledge that the assertion is false or with a reckless disregard of whether or not the assertion  
 13 is false.

14 (2) It is unlawful for a person to misrepresent to a candidate another candidate's public voting record or  
 15 any other matter that is relevant to the issues of the campaign with knowledge that the assertion is false or with  
 16 a reckless disregard of whether or not the assertion is false.

17 (3) For the purposes of this section, the public voting record of a candidate who was previously a  
 18 member of the legislature includes a vote of that candidate recorded in committee minutes or in journals of the  
 19 senate or the house of representatives. Failure of a person to verify a public voting record is evidence of the  
 20 person's reckless disregard if the statement made by the person or the information provided to the candidate is  
 21 false.

22 (4) A person violating subsection (1) or (2) is ~~liable in a civil action brought by the commissioner or~~  
 23 ~~county attorney pursuant to 13-37-124 for an amount up to \$1,000~~ subject to an administrative action under  
 24 [section 3]. An action pursuant to this section is subject to the provisions of 13-37-129 and 13-37-130."

25

26 **Section 19.** Section 13-37-210, MCA, is amended to read:

27 **"13-37-210. Naming and labeling of political committees.** (1) Any political committee filing a  
 28 certification and organizational statement pursuant to 13-37-201 shall:

29 (a) name and identify itself in its organizational statement using a name or phrase:

30 (i) that clearly identifies the economic or other special interest, if identifiable, of a majority of its

1 contributors; and

2 (ii) if a majority of its contributors share a common employer, that identifies the employer; and

3 (b) label any media advertisement or other paid public statement it makes or causes to be made in  
4 support of or opposition to any candidate or ballot issue by printing or broadcasting its name, as provided under  
5 subsection (1)(a), and position in support of or opposition to the candidate or ballot issue as a part of the media  
6 advertisement or other paid public statement.

7 (2) The naming and labeling requirements in subsection (1) are reporting requirements for purposes of  
8 enforcement under ~~43-37-128~~ [section 3]."

9

10 **NEW SECTION. Section 20. Repealer.** The following sections of the Montana Code Annotated are  
11 repealed:

12 13-37-122. Judicial review of orders of noncompliance.

13 13-37-128. Cause of action created.

14 13-37-129. Liability and disposition of fines.

15

16 **NEW SECTION. Section 21. Codification instruction.** [Sections 1 through 3] are intended to be  
17 codified as an integral part of Title 13, chapter 37, part 1, and the provisions of Title 13, chapter 37, part 1, apply  
18 to [sections 1 through 3].

19

20 **NEW SECTION. Section 22. Saving clause.** [This act] does not affect rights and duties that matured,  
21 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

22

23 **NEW SECTION. Section 23. Effective date.** [This act] is effective on passage and approval.

24

- END -