

SENATE BILL NO. 387

INTRODUCED BY DEBBY BARRETT

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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; PROVIDING THAT COUNTY~~
12 ATTORNEYS MAY PROSECUTE ONLY CRIMINAL VIOLATIONS OF CAMPAIGN PRACTICE LAWS;
13 REQUIRING THAT AN ALLEGED CRIMINAL VIOLATION BY A COUNTY ATTORNEY BE REFERRED TO THE
14 ATTORNEY GENERAL; ~~CLARIFYING THE STANDING REQUIREMENT FOR THE FILING OF ETHICS~~
15 COMPLAINTS; CLARIFYING THE STANDING REQUIREMENT FOR THE FILING OF ETHICS COMPLAINTS;
16 AMENDING SECTIONS ~~2-2-136; 2-2-136~~, 13-35-226, 13-35-227, 13-35-403, 13-37-101, 13-37-102, 13-37-103,
17 13-37-104, 13-37-106, 13-37-107, 13-37-111, ~~13-37-113~~, 13-37-113, 13-37-121, 13-37-124, 13-37-130,
18 13-37-131, AND 13-37-210, MCA; REPEALING SECTIONS 13-37-122, 13-37-128, AND 13-37-129, MCA; AND
19 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

20

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

22

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

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

28

29 NEW SECTION. **Section 2. Political practices commission -- membership -- compensation.** (1)
30 There is a political practices commission that consists of three members appointed by the governor, subject to

1 confirmation by a majority of the senate, as follows:

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

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

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

8 (2) THE MEMBERS APPOINTED UNDER SUBSECTIONS (1)(A) AND (1)(B) SHALL SUBMIT THE LIST OF THREE
9 NOMINEES TO THE GOVERNOR WITHIN 30 DAYS OF THE MEMBERS' APPOINTMENT.

10 ~~(2)~~(3) Commission members shall serve 4-year terms.

11 ~~(3)~~(4) Commission members are entitled to compensation and reimbursement for expenses as provided
12 in 2-15-122.

13
14 NEW SECTION. Section 3. Contested case hearings -- penalties -- judicial review -- writ of

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

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

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

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

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

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

30 (6) If the commission fails to hold a contested case hearing within 6 months of the date on which the

1 commissioner referred the matter to the commission, the complainant may, within 90 days after expiration of the
 2 6-month period, seek a writ of mandate from the district court in the first judicial district to compel the commission
 3 to fulfill its duties under this section.

4

5 ~~SECTION 4. SECTION 2-2-136, MCA, IS AMENDED TO READ:~~

6 ~~"2-2-136. Enforcement for state officers, legislators, and state employees -- referral of complaint~~

7 ~~involving county attorney. (1) (a) A person alleging a violation of this part by a state officer, legislator, or state~~
 8 ~~employee may file a complaint with the commissioner of political practices if the person has standing to file the~~
 9 ~~complaint. The commissioner does not have jurisdiction for a complaint concerning a legislator if a legislative act~~
 10 ~~is involved in the complaint. The commissioner also has jurisdiction over complaints against a county attorney~~
 11 ~~that are referred by a local government review panel pursuant to 2-2-144 or filed by a person directly with the~~
 12 ~~commissioner pursuant to 2-2-144(6). The commissioner may request additional information from the complainant~~
 13 ~~or the person who is the subject of the complaint to make an initial determination of whether the complaint states~~
 14 ~~a potential violation of this part.~~

15 ~~(b) The commissioner may dismiss a complaint when the person who filed the complaint has failed to~~
 16 ~~demonstrate standing or may dismiss a complaint that is frivolous, does not state a potential violation of this part,~~
 17 ~~or does not contain sufficient allegations to enable the commissioner to determine whether the complaint states~~
 18 ~~a potential violation of this part. If the issues presented in a complaint have been addressed and decided in a prior~~
 19 ~~decision and the commissioner determines that no additional factual development is necessary, the commissioner~~
 20 ~~may issue a summary decision without holding an informal contested case hearing on the complaint.~~

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

25 ~~(d) A person has standing to allege a violation when the person:~~

26 ~~(i) alleges a past, present, or threatened injury to a property right or a civil right; and~~

27 ~~(ii) alleges an injury that is distinguishable from an injury to the public generally, although the injury does~~
 28 ~~not need to be exclusive to the person alleging the injury.~~

29 ~~(2) (a) Except as provided in subsection (2)(b), if the commissioner determines that a violation of this~~
 30 ~~part has occurred, the commissioner may impose an administrative penalty of not less than \$50 or more than~~

1 \$1,000.

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

4 ~~———— (c) If the violation was committed by a state employee, the commissioner may also recommend that the~~
5 ~~employing state agency discipline the employee. The employing entity of a state employee may take disciplinary~~
6 ~~action against an employee for a violation of this part, regardless of whether the commissioner makes a~~
7 ~~recommendation for discipline. The commissioner may assess the costs of the proceeding against the person~~
8 ~~bringing the charges if the commissioner determines that a violation did not occur or against the officer or~~
9 ~~employee if the commissioner determines that a violation did occur.~~

10 ~~———— (3) A party may seek judicial review of the commissioner's decision, as provided in chapter 4, part 7, of~~
11 ~~this title, after a hearing, a dismissal, or a summary decision issued pursuant to subsection (1)(b):~~

12 ~~———— (4) Except for records made public in the course of a hearing held under subsection (1) and records that~~
13 ~~are open for public inspection pursuant to Montana law, a complaint and records obtained or prepared by the~~
14 ~~commissioner in connection with an investigation or complaint are confidential documents and are not open for~~
15 ~~public inspection. The complainant and the person who is the subject of the complaint shall maintain the~~
16 ~~confidentiality of the complaint and any related documents released to the parties by the commissioner until the~~
17 ~~commissioner issues a decision. However, the person who is the subject of a complaint may waive, in writing,~~
18 ~~the right of confidentiality provided in this subsection. If a waiver is filed with the commissioner, the complaint and~~
19 ~~any related documents must be open for public inspection. The commissioner's decision issued after a hearing~~
20 ~~is a public record open to inspection.~~

21 ~~———— (5) When a complaint is filed, the commissioner may issue statements or respond to inquiries to confirm~~
22 ~~that a complaint has been filed, to identify against whom it has been filed, and to describe the procedural aspects~~
23 ~~and status of the case.~~

24 ~~———— (6) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this part."~~
25

26 **SECTION 4. SECTION 2-2-136, MCA, IS AMENDED TO READ:**

27 **"2-2-136. Enforcement for state officers, legislators, and state employees -- referral of complaint**
28 **involving county attorney.** (1) (a) A person alleging a violation of this part by a state officer, legislator, or state
29 employee may file a complaint with the commissioner of political practices if the person has standing to file the
30 complaint. The commissioner does not have jurisdiction for a complaint concerning a legislator if a legislative act

1 is involved in the complaint. The commissioner also has jurisdiction over complaints against a county attorney
2 that are referred by a local government review panel pursuant to 2-2-144 or filed by a person directly with the
3 commissioner pursuant to 2-2-144(6). The commissioner may request additional information from the complainant
4 or the person who is the subject of the complaint to make an initial determination of whether the complaint states
5 a potential violation of this part.

6 (b) The commissioner may dismiss a complaint when the person who filed the complaint has failed to
7 demonstrate standing or may dismiss a complaint that is frivolous, does not state a potential violation of this part,
8 or does not contain sufficient allegations to enable the commissioner to determine whether the complaint states
9 a potential violation of this part. If the issues presented in a complaint have been addressed and decided in a prior
10 decision and the commissioner determines that no additional factual development is necessary, the commissioner
11 may issue a summary decision without holding an informal contested case hearing on the complaint.

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

16 (d) A person has standing to allege a violation when the person:

17 (i) alleges a past, present, or threatened injury to a property right or a civil right; and

18 (ii) alleges an injury that is distinguishable from an injury to the public generally, although the injury does
19 not need to be exclusive to the person alleging the injury.

20 (2) (a) Except as provided in subsection (2)(b), if the commissioner determines that a violation of this
21 part has occurred, the commissioner may impose an administrative penalty of not less than \$50 or more than
22 \$1,000.

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

25 (c) If the violation was committed by a state employee, the commissioner may also recommend that the
26 employing state agency discipline the employee. The employing entity of a state employee may take disciplinary
27 action against an employee for a violation of this part, regardless of whether the commissioner makes a
28 recommendation for discipline. The commissioner may assess the costs of the proceeding against the person
29 bringing the charges if the commissioner determines that a violation did not occur or against the officer or
30 employee if the commissioner determines that a violation did occur.

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

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

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

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

17 **Section 5.** Section 13-35-226, MCA, is amended to read:

18 **"13-35-226. Unlawful acts of employers and employees.** (1) It is unlawful for any employer, in paying
19 employees the salary or wages due them, to include with their pay the name of any candidate or any political
20 mottoes, devices, or arguments containing threats or promises, express or implied, calculated or intended to
21 influence the political opinions or actions of the employees.

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

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

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

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

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

30 (b) other threats or promises, express or implied, intended or calculated to influence the political opinions

1 or actions of the employer's workers or employees.

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

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

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

11

12 **Section 6.** Section 13-35-227, MCA, is amended to read:

13 **"13-35-227. Prohibited contributions from corporations.** ~~(1) A corporation may not make a~~
14 ~~contribution or an expenditure in connection with to a candidate or a political committee that supports or opposes~~
15 ~~a candidate or a political party. (1) A CORPORATION MAY NOT MAKE A CONTRIBUTION TO A CANDIDATE OR CANDIDATE'S~~
16 CAMPAIGN AND MAY NOT MAKE A CONTRIBUTION TO A POLITICAL COMMITTEE, INCLUDING BUT NOT LIMITED TO A POLITICAL
17 PARTY COMMITTEE, UNLESS THE POLITICAL COMMITTEE SEGREGATES THE CONTRIBUTION IN AN ACCOUNT THAT IS
18 SEPARATE FROM THOSE ACCOUNTS USED TO MAKE DIRECT CONTRIBUTIONS TO CANDIDATES AND CANDIDATES' CAMPAIGN
19 COMMITTEES AND THE CONTRIBUTION IS USED AS AN INDEPENDENT EXPENDITURE.

20 (2) A CANDIDATE OR CANDIDATE'S COMMITTEE MAY NOT ACCEPT OR RECEIVE A CORPORATE CONTRIBUTION
21 DESCRIBED IN SUBSECTION (1).

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

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

27 ~~(4)(2)(3)~~ (4) A person who violates this section is subject to the civil penalty provisions of 13-37-128 an
28 administrative action pursuant to [section 3]."

29

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

1 "**13-35-403. Penalties.** A person who violates 13-35-402 is ~~liable in a civil action pursuant to 13-37-128~~
2 subject to an administrative action pursuant to [section 3]."

3
4 **Section 8.** Section 13-37-101, MCA, is amended to read:
5 "**13-37-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the
6 following definitions apply:

7 (1) "Commission" means the political practices commission established in [section 2].
8 ~~(1)(2)~~ "Commissioner" means the commissioner of political practices created by 13-37-102.
9 ~~(2)(3)~~ "Public office" has the meaning provided in 13-1-101.
10 ~~(3)(4)~~ "Recusal" means disqualification from a matter by reason of prejudice or conflict of interest.
11 ~~(4)(5)~~ "Relative" means a family member who is within the second degree of consanguinity or affinity to
12 the commissioner."

13
14 **Section 9.** Section 13-37-102, MCA, is amended to read:
15 "**13-37-102. Creation of office -- nomination panel -- removal.** (1) There is a commissioner of political
16 practices who is appointed by the governor, subject to confirmation by a majority of the senate, from a list of three
17 nominees submitted by the nomination panel provided for in subsection (2).

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

23 ~~(2)(3)~~ The individual selected to serve as commissioner may be removed by the governor prior to the
24 expiration of the term only for incompetence, malfeasance, or neglect of duty. The governor's decision to remove
25 the commissioner must be stated in writing, and the sufficiency of the governor's stated causes for removing the
26 commissioner is subject to judicial review."

27
28 **Section 10.** Section 13-37-103, MCA, is amended to read:
29 "**13-37-103. Term of office.** Subject to the provisions of 13-37-104, the individual selected to serve as
30 commissioner is appointed for a ~~6-year~~ 4-year term and may not be reappointed to serve as commissioner."

1

2 **Section 11.** Section 13-37-104, MCA, is amended to read:

3 **"13-37-104. Vacancy.** (1) If for any reason a vacancy occurs in the position of commissioner, a
4 successor must be appointed within ~~30~~ 60 days as provided in 13-37-102(1) to serve out the unexpired term.
5 Each ~~nomination~~ appointment must be confirmed by the senate, but a nomination made while the senate is not
6 in session is effective as an appointment until the end of the next session.

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

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

11

12 **Section 12.** Section 13-37-106, MCA, is amended to read:

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

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

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

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

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

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

26

27 **Section 13.** Section 13-37-107, MCA, is amended to read:

28 **"13-37-107. Commissioner of political practices -- qualifications.** The individual appointed to serve
29 as commissioner:

30 (1) must be a citizen of the United States and a resident of Montana as provided in 13-1-112; ~~and~~

1 (2) on the date of appointment, must be registered to vote in Montana; and
 2 (3) may not have a relationship, association, or employment history that would cause the individual, if
 3 appointed as commissioner, to have to be recused in presently identifiable instances, such as those related to
 4 a currently serving elected official, a current candidate, campaign manager, or party director, or a currently active
 5 political organization, that are or could be the subject of a complaint during the commissioner's term."
 6

7 **Section 14.** Section 13-37-111, MCA, is amended to read:

8 **"13-37-111. Investigative Commissioner's investigative powers and duties -- recusal.** (1) Except
 9 as provided in 13-35-240, the commissioner is responsible for investigating all of the alleged violations of the
 10 election laws contained in Title 13, chapter 35, of this title or this chapter and ~~in conjunction with the commission~~
 11 ~~and the county attorneys~~ is are responsible for enforcing these election laws.

12 (2) The commissioner may:

13 (a) investigate all statements filed pursuant to the provisions of Title 13, chapter 35, of this title or this
 14 chapter and shall investigate alleged failures to file any statement or the alleged falsification of any statement filed
 15 pursuant to the provisions of chapter 35 of this title or this chapter. ~~Upon the submission of a written complaint~~
 16 ~~by any individual, the~~ The commissioner shall investigate any other alleged written complaint by an individual
 17 ~~alleging that the individual has been identifiably and specifically harmed by~~ THAT THE INDIVIDUAL HAS BEEN
 18 IDENTIFIABLY AND SPECIFICALLY HARMED BY a violation of the provisions of Title 13, chapter 35, of this title; this
 19 chapter, or any rule adopted pursuant to chapter 35 of this title or this chapter.

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

23 (c) administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and
 24 require the production of any books, papers, correspondence, memoranda, bank account statements of a political
 25 committee or candidate, or other records that are relevant or material for the purpose of conducting any
 26 investigation pursuant to the provisions of Title 13, chapter 35, of this title or this chapter.

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

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

- 1 (b) The deputy:
- 2 (i) may not be an employee of the office of the commissioner;
- 3 (ii) must have the same qualifications as specified for the commissioner in 13-37-107;
- 4 (iii) with respect to only the specific matter from which the commissioner is recused, has the same
- 5 authority, duties, and responsibilities as the commissioner would have absent the recusal; and
- 6 (iv) may not exercise any powers of the office that are not specifically related to the matter for which the
- 7 deputy is appointed.

8 (5) The appointment of the deputy is effectuated by a contract between the commissioner and the

9 deputy. The contract must specify the deputy's term of appointment, which must be temporary, the matter

10 assigned to the deputy, the date on which the matter assigned must be concluded by the deputy, and any other

11 items relevant to the deputy's appointment, powers, or duties."

12

13 ~~Section 15.~~ Section 13-37-113, MCA, is amended to read:

14 ~~"13-37-113. Hiring of attorneys -- prosecutions.~~ The commissioner may hire or retain attorneys who

15 are properly licensed to practice before the supreme court of the state of Montana to prosecute civil violations

16 of Title 13, chapter 35, of this title or this chapter pursuant to ~~[section 3]~~. Any attorney retained or hired shall

17 exercise the powers of a special attorney general, and the attorney may prosecute, subject to the control and

18 supervision of the commissioner and the provisions of 13-35-240, 13-37-124, and 13-37-125, any criminal or civil

19 action arising out of a violation of any provision of chapter 35 of this title or this chapter. All prosecutions must

20 be brought in the state district court for the county in which a violation has occurred or in the district court for

21 Lewis and Clark County. The authority to prosecute as prescribed by this section includes the authority to:

22 ~~(1) institute proceedings for the arrest of persons charged with or reasonably suspected of criminal~~

23 ~~violations of chapter 35 of this title or this chapter;~~

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

25 ~~title or this chapter are presented;~~

26 ~~(3) draw and file indictments, informations, and criminal complaints;~~

27 ~~(4) prosecute all actions for the recovery of debts, fines, penalties, or forfeitures accruing to the state or~~

28 ~~county from persons convicted of violating chapter 35 of this title or this chapter; and~~

29 ~~(5) do any other act necessary to successfully prosecute a violation of any provision of chapter 35 of this~~

30 ~~title or this chapter."~~

1

2 **SECTION 15.** SECTION 13-37-113, MCA, IS AMENDED TO READ:

3 **"13-37-113. Hiring of attorneys --prosecutions.** The commissioner may hire or retain attorneys who
 4 are properly licensed to practice before the supreme court of the state of Montana to prosecute civil violations
 5 of Title 13, chapter 35, of this title or this chapter pursuant to [section 3]. ~~Any attorney retained or hired shall~~
 6 ~~exercise the powers of a special attorney general, and the attorney may prosecute, subject to the control and~~
 7 ~~supervision of the commissioner and the provisions of 13-35-240, 13-37-124, and 13-37-125, any criminal or civil~~
 8 ~~action arising out of a violation of any provision of chapter 35 of this title or this chapter. All prosecutions must~~
 9 ~~be brought in the state district court for the county in which a violation has occurred or in the district court for~~
 10 ~~Lewis and Clark County. The authority to prosecute as prescribed by this section includes the authority to:~~
 11 ~~———(1) institute proceedings for the arrest of persons charged with or reasonably suspected of criminal~~
 12 ~~violations of chapter 35 of this title or this chapter;~~
 13 ~~———(2) attend and give advice to a grand jury when cases involving criminal violations of chapter 35 of this~~
 14 ~~title or this chapter are presented;~~
 15 ~~———(3) draw and file indictments, informations, and criminal complaints;~~
 16 ~~———(4) prosecute all actions for the recovery of debts, fines, penalties, or forfeitures accruing to the state or~~
 17 ~~county from persons convicted of violating chapter 35 of this title or this chapter; and~~
 18 ~~———(5) do any other act necessary to successfully prosecute a violation of any provision of chapter 35 of this~~
 19 ~~title or this chapter."~~

20

21 **Section 16.** Section 13-37-121, MCA, is amended to read:

22 **"13-37-121. Inspection of statements and reports -- issuance of orders of noncompliance --**
 23 **referral to commission.** (1) Each statement and report filed with the commissioner during an election or within
 24 60 days after the election must be inspected within 20 days after the statement or report is filed. Intermediate
 25 Saturdays, Sundays, and holidays must be excluded in the computation of time under this section. If a person
 26 has not satisfied the provisions of this chapter, the commissioner shall immediately notify the person of the
 27 noncompliance. Notification by the commissioner may be accomplished by written or electronic communication
 28 or by telephone. The commissioner shall also provide the person with proof of the noncompliance. If the person
 29 fails to comply after the notification, the commissioner shall issue an order of noncompliance as provided in this
 30 section.

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

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

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

6 (3) If an order of noncompliance is issued during a campaign period or within 60 days after an election,
7 a candidate or political committee shall submit the necessary information within 5 days after receiving the order
8 of noncompliance. Upon ~~a the person's~~ failure to submit the required information within the time specified, the
9 ~~appropriate county attorney or the commissioner may initiate a civil or criminal action pursuant to the procedures~~
10 ~~outlined in 13-37-124 and 13-37-125~~ APPROPRIATE COUNTY ATTORNEY MAY INITIATE A CIVIL OR CRIMINAL ACTION
11 PURSUANT TO 13-37-124 AND 13-37-125 OR THE commissioner shall refer the matter to the commission for an
12 administrative action under [section 3].

13 (4) If an order of noncompliance is issued during any period other than that described in subsection (3),
14 a candidate or political committee shall submit the necessary information within 10 days after receiving the order
15 of noncompliance. Upon ~~a the person's~~ failure to submit the required information within the time specified, the
16 ~~appropriate county attorney or the commissioner shall initiate a civil or criminal action pursuant to the procedures~~
17 ~~outlined in 13-37-124 and 13-37-125~~ APPROPRIATE COUNTY ATTORNEY MAY INITIATE A CIVIL OR CRIMINAL ACTION
18 PURSUANT TO 13-37-124 AND 13-37-125 OR THE commissioner shall refer the matter to the commission for an
19 administrative action under [section 3].

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

23

24 **Section 17.** Section 13-37-124, MCA, is amended to read:

25 **"13-37-124. Consultation and cooperation with county attorney -- CIVIL OR criminal prosecution.**

26 (1) Except as provided in 13-35-240, whenever the ~~commissioner~~ commission determines that there appears to
27 be sufficient evidence to justify a civil or ~~CIVIL OR~~ criminal prosecution under Title 13, chapter 35, of this title or
28 this chapter, the ~~commissioner~~ commission shall notify the county attorney of the county in which the alleged
29 violation occurred and shall arrange to transmit to the county attorney all information relevant to the alleged
30 violation. ~~If the county attorney fails to initiate the appropriate civil or criminal action within 30 days after receiving~~

1 notification of the alleged violation, the commissioner may then initiate the appropriate legal action. ~~IF THE COUNTY~~
 2 ~~ATTORNEY FAILS TO INITIATE THE APPROPRIATE CIVIL OR CRIMINAL ACTION WITHIN 30 DAYS AFTER RECEIVING~~
 3 ~~NOTIFICATION OF THE ALLEGED VIOLATION, THE COMMISSION MAY THEN INITIATE THE APPROPRIATE LEGAL ACTION.~~

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

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

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

15 ~~———— (4) IF A PROSECUTION IS UNDERTAKEN BY THE COMMISSIONER, ALL COURT COSTS ASSOCIATED WITH THE~~
 16 ~~PROSECUTION MUST BE PAID BY THE STATE OF MONTANA, AND ALL FINES AND FORFEITURES IMPOSED PURSUANT TO A~~
 17 ~~PROSECUTION BY THE COMMISSIONER, EXCEPT THOSE PAID TO OR IMPOSED BY A JUSTICE'S COURT, MUST BE DEPOSITED~~
 18 ~~IN THE STATE GENERAL FUND."~~

19
 20 **Section 18.** Section 13-37-130, MCA, is amended to read:
 21 **"13-37-130. Limitation of action.** An action may not be brought under 13-37-128 and 13-37-129 The
 22 commission may not initiate an administrative action under [section 3] more than 4 3 years after the occurrence
 23 of the facts that give rise to the action. No more than one judgment against a particular defendant respondent
 24 may be had imposed based on a single state set of facts. The civil action created in 13-37-128 and 13-37-129
 25 administrative action under [section 3] is the exclusive remedy for violation of the contribution, expenditure, and
 26 reporting provisions of this chapter. These provisions are not subject to the misdemeanor penalties of 13-35-103
 27 but may be a ground grounds for contest of contesting an election or removal from office as provided in
 28 13-35-106(3) and Title 13, chapter 36."

29
 30 **Section 19.** Section 13-37-131, MCA, is amended to read:

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

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

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

13 (4) A person violating subsection (1) or (2) is ~~liable in a civil action brought by the commissioner or~~
14 ~~county attorney pursuant to 13-37-124 for an amount up to \$1,000~~ subject to an administrative action under
15 [section 3]. An action pursuant to this section is subject to the provisions of 13-37-129 and 13-37-130."
16

17 **Section 20.** Section 13-37-210, MCA, is amended to read:

18 **"13-37-210. Naming and labeling of political committees.** (1) Any political committee filing a
19 certification and organizational statement pursuant to 13-37-201 shall:

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

21 (i) that clearly identifies the economic or other special interest, if identifiable, of a majority of its
22 contributors; and

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

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

28 (2) The naming and labeling requirements in subsection (1) are reporting requirements for purposes of
29 enforcement under ~~13-37-128~~ [section 3]."
30

1 NEW SECTION. **Section 21. Repealer.** The following sections of the Montana Code Annotated are
2 repealed:

3 13-37-122. Judicial review of orders of noncompliance.

4 13-37-128. Cause of action created.

5 13-37-129. Liability and disposition of fines.

6

7 NEW SECTION. **Section 22. Codification instruction.** [Sections 1 through 3] are intended to be
8 codified as an integral part of Title 13, chapter 37, part 1, and the provisions of Title 13, chapter 37, part 1, apply
9 to [sections 1 through 3].

10

11 NEW SECTION. **Section 23. Saving clause.** [This act] does not affect rights and duties that matured,
12 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

13

14 NEW SECTION. **Section 24. Effective date.** [This act] is effective on passage and approval.

15

- END -