

SENATE BILL NO. 397

INTRODUCED BY C. KAUFMANN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE AUTHORITY OF THE COMMISSIONER OF
5 POLITICAL PRACTICES TO ENFORCE LAWS PERTAINING TO ANONYMOUS ~~ELECTION MATERIAL~~
6 CAMPAIGN ADVERTISING; PROVIDING NEW CIVIL PENALTIES; PROVIDING A HEARING PROCESS;
7 PROVIDING FOR THE COLLECTION AND DISPOSITION OF PENALTIES; AND AMENDING ~~SECTION~~
8 SECTIONS 2-2-121, 13-1-101, 13-35-225, AND 13-37-226, MCA."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11
12 NEW SECTION. Section 1. Civil penalties for anonymous materials CAMPAIGN ADVERTISING -- option
13 for hearing -- collection and disposition of penalty amounts. (1) In addition to any other penalties or remedies
14 established by law, a person whose ~~election materials violate~~ CAMPAIGN ADVERTISING VIOLATES a provision of
15 13-35-225 is subject to a civil penalty of \$100 for each instance, as defined by rule, in which the ~~election material~~
16 CAMPAIGN ADVERTISING is not corrected or withdrawn from circulation after an order of noncompliance has been
17 issued under 13-35-225(6), up to a maximum penalty of \$2,500.

18 (2) (a) A person against whom a civil penalty is imposed pursuant to this section may request a hearing
19 before the commissioner within 10 days of receiving a notice from the commissioner of imposition of a civil
20 penalty. Upon receipt of a timely request, the commissioner shall hold an informal contested case hearing under
21 the provisions of Title 2, chapter 4, part 6.

22 (b) At the hearing, the commissioner shall consider any mitigating factors or circumstances and may
23 reduce or waive the civil penalty.

24 (3) AN ORDER OF NONCOMPLIANCE ISSUED UNDER 13-35-225(6) IS NOT SUBJECT TO IMMEDIATE JUDICIAL
25 REVIEW.

26 ~~(3)(4)~~ (a) Penalties not paid in a timely manner are subject to collection pursuant to Title 17, chapter 4,
27 part 1.

28 (b) Subject to 17-4-106, penalties paid pursuant to this section must be deposited to the general fund.

29
30 SECTION 2. SECTION 2-2-121, MCA, IS AMENDED TO READ:

1 **"2-2-121. Rules of conduct for public officers and public employees.** (1) Proof of commission of any
2 act enumerated in subsection (2) is proof that the actor has breached a public duty.

3 (2) A public officer or a public employee may not:

4 (a) subject to subsection (7), use public time, facilities, equipment, supplies, personnel, or funds for the
5 officer's or employee's private business purposes;

6 (b) engage in a substantial financial transaction for the officer's or employee's private business purposes
7 with a person whom the officer or employee inspects or supervises in the course of official duties;

8 (c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other
9 economic benefit from the officer's or employee's agency;

10 (d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic
11 benefit from any agency;

12 (e) perform an official act directly and substantially affecting to its economic benefit a business or other
13 undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel,
14 consultant, representative, or agent; or

15 (f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a
16 person whom the officer or employee regulates in the course of official duties without first giving written
17 notification to the officer's or employee's supervisor and department director.

18 (3) (a) Except as provided in subsection (3)(b), a public officer or public employee may not use public
19 time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political
20 committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the
21 use is:

22 (i) authorized by law; or

23 (ii) properly incidental to another activity required or authorized by law, such as the function of an elected
24 public officer, the officer's staff, or the legislative staff in the normal course of duties.

25 (b) As used in this subsection (3), "properly incidental to another activity required or authorized by law"
26 does not include any activities related to solicitation of support for or opposition to the nomination or election of
27 a person to public office or political committees organized to support or oppose a candidate or candidates for
28 public office. With respect to ballot issues, properly incidental activities are restricted to:

29 (i) the activities of a public officer, the public officer's staff, or legislative staff related to determining the
30 impact of passage or failure of a ballot issue on state or local government operations;

1 (ii) in the case of a school district, as defined in Title 20, chapter 6, compliance with the requirements of
2 law governing public meetings of the local board of trustees, including the resulting dissemination of information
3 by a board of trustees or a school superintendent or a designated employee in a district with no superintendent
4 in support of or opposition to a bond issue or levy submitted to the electors. Public funds may not be expended
5 for any form of commercial advertising in support of or opposition to a bond issue or levy submitted to the
6 electors.

7 (c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express
8 personal political views.

9 (4) A candidate, as defined in ~~13-1-101(6)(a)~~ 13-1-101(7)(a), may not use or permit the use of state
10 funds for any advertisement or public service announcement in a newspaper, on radio, or on television that
11 contains the candidate's name, picture, or voice except in the case of a state or national emergency and then only
12 if the announcement is reasonably necessary to the candidate's official functions.

13 (5) A public officer or public employee may not participate in a proceeding when an organization, other
14 than an organization or association of local government officials, of which the public officer or public employee
15 is an officer or director is:

16 (a) involved in a proceeding before the employing agency that is within the scope of the public officer's
17 or public employee's job duties; or

18 (b) attempting to influence a local, state, or federal proceeding in which the public officer or public
19 employee represents the state or local government.

20 (6) A public officer or public employee may not engage in any activity, including lobbying, as defined in
21 5-7-102, on behalf of an organization, other than an organization or association of local government officials, of
22 which the public officer or public employee is a member while performing the public officer's or public employee's
23 job duties. The provisions of this subsection do not prohibit a public officer or public employee from performing
24 charitable fundraising activities if approved by the public officer's or public employee's supervisor or authorized
25 by law.

26 (7) A listing by a public officer or a public employee in the electronic directory provided for in 30-17-101
27 of any product created outside of work in a public agency is not in violation of subsection (2)(a) of this section.
28 The public officer or public employee may not make arrangements for the listing in the electronic directory during
29 work hours.

30 (8) A department head or a member of a quasi-judicial or rulemaking board may perform an official act

1 notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a statute
2 and if the person complies with the disclosure procedures under 2-2-131.

3 (9) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless
4 the member is also a full-time public employee.

5 (10) Subsections (2)(b) and (2)(e) do not prevent a member of the governing body of a local government
6 from performing an official act when the member's participation is necessary to obtain a quorum or to otherwise
7 enable the body to act. The member shall disclose the interest creating the appearance of impropriety prior to
8 performing the official act."

9

10 **SECTION 3. SECTION 13-1-101, MCA, IS AMENDED TO READ:**

11 **"13-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following
12 definitions apply:

13 (1) "Active elector" means an elector whose name has not been placed on the inactive list due to failure
14 to respond to confirmation notices pursuant to 13-2-220 or 13-19-313.

15 (2) "Active list" means a list of active electors maintained pursuant to 13-2-220.

16 (3) "Anything of value" means any goods that have a certain utility to the recipient that is real and that
17 is ordinarily not given away free but is purchased.

18 (4) "Application for voter registration" means a voter registration form prescribed by the secretary of state
19 that is completed and signed by an elector, submitted to the election administrator, and contains voter registration
20 information subject to verification as provided by law.

21 (5) "Ballot" means a paper ballot counted manually or a paper ballot counted by a machine, such as an
22 optical scan system or other technology that automatically tabulates votes cast by processing the paper ballots.

23 (6) "Campaign advertising" means a communication that:

24 (a) supports or opposes a candidate, a ballot issue, or a committee organized to support or oppose a
25 candidate, ballot issue, or petition for nomination;

26 (b) is disseminated or targeted to more than 1% of the electors eligible to vote for a particular candidate
27 or on a ballot issue; and

28 (c) is made or financed by expenditures in a total amount exceeding:

29 (i) for advertising identifying political parties, statewide candidates, or a ballot issue, the individual
30 contribution limit amount provided by 13-37-216 for statewide candidates other than the candidates for governor

1 or lieutenant governor; or

2 (ii) for advertising identifying other candidates, the contribution limit amount provided by 13-37-216 for
3 a candidate for any other public office.

4 ~~(6)~~(7) "Candidate" means:

5 (a) an individual who has filed a declaration or petition for nomination, acceptance of nomination, or
6 appointment as a candidate for public office as required by law;

7 (b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained
8 contributions, made expenditures, or given consent to an individual, organization, political party, or committee
9 to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure nomination
10 or election to any office at any time, whether or not the office for which the individual will seek nomination or
11 election is known when the:

12 (i) solicitation is made;

13 (ii) contribution is received and retained; or

14 (iii) expenditure is made; or

15 (c) an officeholder who is the subject of a recall election.

16 ~~(7)~~(8) (a) "Contribution" means:

17 (i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value
18 to influence an election;

19 (ii) a transfer of funds between political committees;

20 (iii) the payment by a person other than a candidate or political committee of compensation for the
21 personal services of another person that are rendered to a candidate or political committee.

22 (b) "Contribution" does not mean:

23 (i) services provided without compensation by individuals volunteering a portion or all of their time on
24 behalf of a candidate or political committee or meals and lodging provided by individuals in their private
25 residences for a candidate or other individual;

26 (ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any
27 broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

28 (iii) the cost of any communication by any membership organization or corporation to its members or
29 stockholders or employees; or

30 (iv) filing fees paid by the candidate.

1 ~~(8)~~(9) "Election" means a general, regular, special, or primary election held pursuant to the requirements
2 of state law, regardless of the time or purpose.

3 ~~(9)~~(10) "Election administrator" means the county clerk and recorder or the individual designated by a
4 county governing body to be responsible for all election administration duties, except that with regard to school
5 elections not administered by the county, the term means the school district clerk.

6 ~~(10)~~(11) "Elector" means an individual qualified to vote under state law.

7 ~~(11)~~(12) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or
8 gift of money or anything of value made for the purpose of influencing the results of an election.

9 (b) "Expenditure" does not mean:

10 (i) services, food, or lodging provided in a manner that they are not contributions under subsection ~~(7)~~
11 (8);

12 (ii) payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or
13 personal necessities for the candidate and the candidate's family;

14 (iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any
15 broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

16 (iv) the cost of any communication by any membership organization or corporation to its members or
17 stockholders or employees.

18 ~~(12)~~(13) "Federal election" means a general or primary election in which an elector may vote for
19 individuals for the office of president of the United States or for the United States congress.

20 ~~(13)~~(14) "General election" or "regular election" means an election held for the election of public officers
21 throughout the state at times specified by law, including elections for officers of political subdivisions when the
22 time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues
23 required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the
24 legislature to the electors at a general election, "general election" means an election held at the time provided
25 in 13-1-104(1). For ballot issues required by Article XIV, section 9, of the Montana constitution to be submitted
26 as a constitutional initiative at a regular election, regular election means an election held at the time provided in
27 13-1-104(1).

28 ~~(14)~~(15) "Inactive elector" means an individual who failed to respond to confirmation notices and whose
29 name was placed on the inactive list pursuant to 13-2-220 or 13-19-313.

30 ~~(15)~~(16) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220 or 13-19-313.

1 ~~(16)~~(17) "Individual" means a human being.

2 ~~(17)~~(18) (a) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their
3 approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall
4 questions, school levy questions, bond issue questions, or a ballot question.

5 (b) For the purposes of chapters 35 and 37, an issue becomes a "ballot issue" upon certification by the
6 proper official that the legal procedure necessary for its qualification and placement upon the ballot has been
7 completed, except that a statewide issue becomes a "ballot issue" upon preparation and transmission by the
8 secretary of state of the form of the petition or referral to the person who submitted the proposed issue.

9 ~~(18)~~(19) "Legally registered elector" means an individual whose application for voter registration was
10 accepted, processed, and verified as provided by law.

11 ~~(19)~~(20) "Mail ballot election" means any election that is conducted under Title 13, chapter 19, by mailing
12 ballots to all active electors.

13 ~~(20)~~(21) "Person" means an individual, corporation, association, firm, partnership, cooperative,
14 committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (6).

15 ~~(21)~~(22) "Place of deposit" means a location designated by the election administrator pursuant to
16 13-19-307 for a mail ballot election conducted under Title 13, chapter 19.

17 ~~(22)~~(23) "Political committee" means a combination of two or more individuals or a person other than an
18 individual who makes a contribution or expenditure:

19 (a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a
20 petition for nomination; or

21 (b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

22 (c) as an earmarked contribution.

23 ~~(23)~~(24) "Political subdivision" means a county, consolidated municipal-county government, municipality,
24 special district, or any other unit of government, except school districts, having authority to hold an election for
25 officers or on a ballot issue.

26 ~~(24)~~(25) "Polling place election" means an election primarily conducted at polling places rather than by
27 mail under the provisions of Title 13, chapter 19.

28 ~~(25)~~(26) "Primary" or "primary election" means an election held throughout the state to nominate
29 candidates for public office at times specified by law, including nominations of candidates for offices of political
30 subdivisions when the time for nominations is set on the same date for all similar subdivisions in the state.

1 ~~(26)~~(27) "Provisional ballot" means a ballot cast by an elector whose identity or eligibility to vote has not
2 been verified as provided by law.

3 ~~(27)~~(28) "Provisionally registered elector" means an individual whose application for voter registration
4 was accepted but whose identity or eligibility has not yet been verified as provided by law.

5 ~~(28)~~(29) "Public office" means a state, county, municipal, school, or other district office that is filled by
6 the people at an election.

7 ~~(29)~~(30) "Random-sample audit" means an audit involving a manual count of ballots from designated
8 races and ballot issues in precincts selected through a random process as provided in 13-17-503.

9 ~~(30)~~(31) "Registrar" means the county election administrator and any regularly appointed deputy or
10 assistant election administrator.

11 ~~(31)~~(32) "Special election" means an election other than a statutorily scheduled primary or general
12 election held at any time for any purpose provided by law. It may be held in conjunction with a statutorily
13 scheduled election.

14 ~~(32)~~(33) "Statewide voter registration list" means the voter registration list established and maintained
15 pursuant to 13-2-107 and 13-2-108.

16 ~~(33)~~(34) "Transfer form" means a form prescribed by the secretary of state that may be filled out by an
17 elector to transfer the elector's registration when the elector's residence address has changed within the county.

18 ~~(34)~~(35) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided
19 in 13-15-206.

20 ~~(35)~~(36) "Voted ballot" means a ballot that is:

- 21 (a) deposited in the ballot box at a polling place;
22 (b) received at the election administrator's office; or
23 (c) returned to a place of deposit.

24 ~~(36)~~(37) "Voting system" or "system" means any machine, device, technology, or equipment used to
25 automatically record, tabulate, or process the vote of an elector cast on a paper ballot."
26

27 **Section 4.** Section 13-35-225, MCA, is amended to read:

28 "**13-35-225. Election materials CAMPAIGN ADVERTISING not to be anonymous -- statement of**
29 **accuracy -- order of noncompliance -- penalty.** (1) ~~All communications advocating the success or defeat of~~
30 ~~a candidate, political party, or ballot issue~~ CAMPAIGN ADVERTISING through any broadcasting station, newspaper,

1 magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, internet website, or other
 2 form of general political advertising must clearly and conspicuously include the attribution "paid for by" followed
 3 by the name and address of the person who made or financed the expenditure for the ~~communication~~ CAMPAIGN
 4 ADVERTISING. ~~When~~ THE ATTRIBUTION MUST CONTAIN:

5 (A) FOR CAMPAIGN ADVERTISING FINANCED BY a candidate or a candidate's campaign, ~~finances the~~
 6 ~~expenditure, the attribution must be~~ the name and the address of the candidate or the candidate's campaign; ~~AND~~
 7 ~~In the case of~~

8 (B) FOR CAMPAIGN ADVERTISING FINANCED BY a political committee, ~~the attribution must be the name of the~~
 9 ~~committee, the name of the committee treasurer,~~ THE NAME and the address of the committee ~~or the committee~~
 10 ~~treasurer.~~

11 (2) ~~Communications~~ CAMPAIGN ADVERTISING in a partisan election financed by a candidate or a political
 12 committee organized on the candidate's behalf must state the candidate's party affiliation or include the party
 13 symbol.

14 (3) (a) ~~Printed election material~~ CAMPAIGN ADVERTISING described in subsection (1) that includes
 15 information about another candidate's voting record must include:

16 (i) a reference to the particular vote or votes upon which the information is based;
 17 (ii) a disclosure of contrasting votes known to have been made by the candidate on the same issue if
 18 closely related in time; and

19 (iii) a statement, signed as provided in subsection (3)(b), that to the best of the signer's knowledge, the
 20 statements made about the other candidate's voting record are accurate and true.

21 (b) The statement required under subsection (3)(a) must be signed:

22 (i) by the candidate if the ~~election material~~ CAMPAIGN ADVERTISING was prepared for the candidate or the
 23 candidate's political committee and includes information about another candidate's voting record; or

24 (ii) by the person financing the ~~communication~~ CAMPAIGN ADVERTISING or the person's legal agent if the
 25 ~~election material~~ CAMPAIGN ADVERTISING was not prepared for a candidate or a candidate's political committee.

26 (4) If a document or other article of advertising is too small for the requirements of subsections (1)
 27 through (3) to be conveniently included, the candidate responsible for ~~the material~~ or the person financing the
 28 ~~communication~~ CAMPAIGN ADVERTISING shall file a copy of the article with the commissioner of political practices,
 29 together with the required information or statement, at the time of its public distribution.

30 (5) If information required in subsections (1) through (3) is omitted or not printed, upon discovery of or

1 notification about the omission, the candidate responsible for ~~the material~~ or the person financing the
 2 ~~communication~~ CAMPAIGN ADVERTISING shall:

3 (a) file notification of the omission with the commissioner of political practices within 5 days of the
 4 discovery or notification;

5 (b) bring the ~~material~~ CAMPAIGN ADVERTISING into compliance with subsections (1) through (3); and

6 (c) withdraw any noncompliant ~~communication~~ CAMPAIGN ADVERTISING from circulation as soon as
 7 reasonably possible.

8 (6) If the commissioner determines that ~~election material~~ CAMPAIGN ADVERTISING does not comply with
 9 the provisions of this section and that the person responsible for the ~~material~~ CAMPAIGN ADVERTISING has been
 10 notified and has had a reasonable opportunity, AS DEFINED BY RULE, to bring the ~~material~~ CAMPAIGN ADVERTISING
 11 into compliance or withdraw the ~~material~~ CAMPAIGN ADVERTISING as required in subsection (5), the commissioner
 12 may issue an order of noncompliance and notify the person that the penalties and provisions of [section 1] apply
 13 from the date the order of noncompliance is issued under this subsection."

14

15 **SECTION 5. SECTION 13-37-226, MCA, IS AMENDED TO READ:**

16 **"13-37-226. Time for filing reports.** (1) Candidates for a state office filled by a statewide vote of all the
 17 electors of Montana and political committees that are organized to support or oppose a particular statewide
 18 candidate shall file reports electronically as follows:

19 (a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in
 20 which funds are received or expended during the year or years prior to the election year that the candidate
 21 expects to be on the ballot;

22 (b) on the 10th day of March, April, July, August, and September;

23 (c) on the 15th and 5th days preceding the date on which an election is held;

24 (d) within 24 hours after receiving a contribution of \$200 or more if received between the 10th day before
 25 the election and the day of the election;

26 (e) not more than 20 days after the date of the election; and

27 (f) on the 10th day of March and September of each year following an election until the candidate or
 28 political committee files a closing report as specified in 13-37-228(3).

29 (2) Political committees organized to support or oppose a particular statewide ballot issue shall file
 30 reports:

1 (a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in
2 which the text of the proposed ballot issue is submitted for review and approval pursuant to 13-27-202 during the
3 year or years prior to the election year that an issue is or is expected to be on the ballot;

4 (b) on the 10th day of March and on the 10th day of each subsequent month through September in each
5 year that an election is to be held;

6 (c) on the 15th and 5th days preceding the date on which an election is held;

7 (d) within 24 hours after receiving a contribution of \$500 or more if received between the 10th day before
8 the election and the day of the election;

9 (e) within 20 days after the election; and

10 (f) on the 10th day of March and September of each year following an election until the political
11 committee files a closing report as specified in 13-37-228(3).

12 (3) Candidates for a state district office, including but not limited to candidates for the legislature, the
13 public service commission, or a district court judge, and political committees that are specifically organized to
14 support or oppose a particular state district candidate or issue shall file reports:

15 (a) on the 12th day preceding the date on which an election is held;

16 (b) within 48 hours after receiving a contribution of \$100 or more if received between the 17th day before
17 the election and the day of the election. The report under this subsection (3)(b) must be made by mail or by
18 electronic communication to the commissioner and the election administrator of the appropriate county pursuant
19 to 13-37-225.

20 (c) not more than 20 days after the date of the election; and

21 (d) whenever a candidate or political committee files a closing report as specified in 13-37-228(3).

22 (4) Candidates for any other public office and political committees that are specifically organized to
23 support or oppose a particular local issue shall file the reports specified in subsection (3) only if the total amount
24 of contributions received or the total amount of funds expended for all elections in a campaign, excluding the filing
25 fee paid by the candidate, exceeds \$500, except as provided in 13-37-206.

26 (5) For the purposes of this subsection, a committee that is not specifically organized to support or
27 oppose a particular candidate or ballot issue and that receives contributions and makes expenditures in
28 conjunction with an election is an independent committee. For the purpose of reporting, a political party committee
29 is an independent committee. An independent committee shall file:

30 (a) a report on the 12th day preceding the date of an election in which it participates by making an

1 expenditure;

2 (b) a report within 24 hours of making an expenditure or incurring a debt or obligation of \$500 or more
3 for ~~election material~~ campaign advertising described in 13-35-225(1) if made between the 17th day before the
4 election and the day of the election;

5 (c) a report not more than 20 days after the date of the election in which it participates by making an
6 expenditure; and

7 (d) a report on a date to be prescribed by the commissioner for a closing report at the close of each
8 calendar year.

9 (6) The commissioner may promulgate rules regarding the extent to which organizations that are
10 incidental political committees shall report their politically related activities in accordance with this chapter.

11 (7) Except as provided in subsections (1)(d), (2)(d), (3)(b), and (5)(b), all reports required by this section
12 must be complete as of the fifth day before the date of filing as specified in 13-37-228(2) and this section."

13

14 NEW SECTION. **Section 6. Codification instruction.** [Section 1] is intended to be codified as an
15 integral part of Title 13, chapter 37, and the provisions of Title 13, chapter 37, apply to [section 1].

16

- END -