

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_  
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE COMPLAINT PROCEDURE FOR THE  
5 COMMISSIONER OF POLITICAL PRACTICES; REQUIRING THAT NOTICE BE GIVEN TO THE SUBJECT OF  
6 A COMPLAINT PRIOR TO THE ISSUANCE OF CERTAIN FINDINGS; PROVIDING SANCTIONS FOR  
7 FRIVOLOUS COMPLAINTS; AMENDING SECTIONS 13-37-111 AND 13-37-121, MCA; AND PROVIDING AN  
8 EFFECTIVE DATE."

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

11

12 **Section 1.** Section 13-37-111, MCA, is amended to read:

13 **"13-37-111. Investigative powers and duties -- recusal.** (1) Except as provided in 13-35-240 and this  
14 section, the commissioner is responsible for investigating all of the alleged violations of the election laws  
15 contained in chapter 35 of this title or this chapter and in conjunction with the county attorneys is responsible for  
16 enforcing these election laws.

17 (2) The commissioner may:

18 (a) investigate all statements filed pursuant to the provisions of chapter 35 of this title or this chapter and  
19 shall investigate alleged failures to file any statement or the alleged falsification of any statement filed pursuant  
20 to the provisions of chapter 35 of this title or this chapter. Upon the submission of a written complaint by any  
21 individual, the commissioner shall follow the procedure outlined in [section 3] and shall investigate any other  
22 alleged violation of the provisions of chapter 35 of this title, this chapter, or any rule adopted pursuant to chapter  
23 35 of this title or this chapter.

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

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



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

3 (4) The commissioner is recused from participating in any decision in which the commissioner is accused  
4 of violating 13-37-108 or any other ethical standard.

5 (5) (a) If a campaign finance or ethics complaint is filed in the office of the commissioner against the  
6 commissioner, a supervisor within the commissioner's office shall within 10 business days forward the complaint  
7 to the attorney general, who shall within 45 days appoint a deputy in the case of a finance complaint or a deputy  
8 and a hearings officer in the case of an ethics complaint to make a determination in the matter of the complaint.  
9 The attorney general shall, to the extent practicable, ensure that there is no conflict of interest in the appointment  
10 of the deputy or hearings officer or in the provision of any legal advice to the office of the commissioner.

11 (b) A deputy appointed pursuant to this subsection must, in addition to complying with the requirements  
12 of subsection (6)(b), be an attorney licensed to practice law in Montana who is engaged in the private practice  
13 of law and who has liability insurance applicable to the purposes for which the deputy is appointed.

14 (c) If a complaint is filed against the commissioner, another employee in the office of the commissioner  
15 may not provide the commissioner with any information or documents concerning a complaint against the  
16 commissioner beyond that information or those documents normally provided to persons in matters before the  
17 commissioner.

18 (6) (a) If the commissioner is recused pursuant to this section, the commissioner shall, except as  
19 provided in subsection (5), appoint a deputy, subject to subsection (6)(b).

20 (b) The deputy:

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

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

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

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

27 (7) (a) Except as provided in subsection (7)(b), the appointment of the deputy is effectuated by a contract  
28 between the commissioner and the deputy. A contract executed pursuant to this subsection (7) must specify the  
29 deputy's term of appointment, which must be temporary, the matter assigned to the deputy, the date on which  
30 the matter assigned must be concluded by the deputy, and any other items relevant to the deputy's appointment,

1 powers, or duties.

2 (b) If a deputy is appointed pursuant to subsection (5), the appointment of the deputy is effectuated by  
3 a contract between the supervisor who forwarded the complaint to the attorney general and the deputy or the  
4 deputy and the hearings officer, but the contract is construed to be with the office of the commissioner."

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6 **Section 2.** Section 13-37-121, MCA, is amended to read:

7 **"13-37-121. Inspection of statements and reports -- issuance of orders of noncompliance.** (1) Each  
8 statement and report filed with the commissioner during an election or within 60 days after the election must be  
9 inspected within 20 days after the statement or report is filed. Intermediate Saturdays, Sundays, and holidays  
10 must be excluded in the computation of time under this section. If a person has not satisfied the provisions of this  
11 chapter, the commissioner shall immediately notify the person of the noncompliance. Notification by the  
12 commissioner may be accomplished by written or electronic communication or by telephone. If the person fails  
13 to comply after the notification, the commissioner shall issue an order of noncompliance as provided in this  
14 section.

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

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

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

20 (3) If an order of noncompliance is issued during a campaign period or within 60 days after an election,  
21 a candidate or political committee shall submit the necessary information within 5 days after receiving the order  
22 of noncompliance. Upon a failure to submit the required information within the time specified, the appropriate  
23 county attorney or the commissioner may initiate a civil or criminal action pursuant to the procedures outlined in  
24 13-37-124 and 13-37-125.

25 (4) If an order of noncompliance is issued during any period other than that described in subsection (3),  
26 a candidate or political committee shall submit the necessary information within 10 days after receiving the order  
27 of noncompliance. Upon a failure to submit the required information within the time specified, the appropriate  
28 county attorney or the commissioner shall initiate a civil or criminal action pursuant to the procedures outlined  
29 in 13-37-124 and 13-37-125.

30 (5) After a complaint is filed with the commissioner pursuant to 13-37-111, the procedure described in

1 this section regarding the provision of notice and issuance of orders of noncompliance is not a prerequisite to  
2 initiation of any other administrative or judicial action authorized under chapter 35 of this title or this chapter.  
3 However, other actions initiated pursuant to a complaint are subject to the complaint procedure and notice  
4 requirements specified in [section 3]."

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6 **NEW SECTION. Section 3. Complaint procedure -- sufficiency finding.** (1) (a) Except as provided  
7 by subsection (2), upon the receipt of a complaint, the commissioner shall review the complaint to determine if  
8 the complaint has a sufficient legal and factual basis to proceed.

9 (b) If the commissioner determines that the complaint does not have a sufficient legal and factual basis  
10 to proceed, the commissioner shall dismiss the complaint.

11 (c) If the commissioner determines that the complaint has a sufficient legal and factual basis to proceed,  
12 the commissioner shall notify the person who is the subject of the complaint that the person has 10 business days  
13 to provide a response. Upon request, the commissioner shall allow an additional 20 days for a response. After  
14 the commissioner has received the response or after the expiration of the response deadline and extension, if  
15 requested, the commissioner shall issue a finding determining whether there is sufficient evidence to justify a civil  
16 or criminal prosecution under chapter 35 of this title or this chapter.

17 (2) A complaint concerning the requirements of 13-35-225(1) through (3) is exempt from the procedure  
18 specified under this section and must follow the procedure specified under 13-35-225(6) and (7).

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20 **NEW SECTION. Section 4. Sanctions for frivolous complaints.** (1) By submitting a complaint to the  
21 commissioner, the party submitting the complaint certifies that to the best of the person's knowledge, information,  
22 and belief, formed after an inquiry reasonable under the circumstances:

23 (a) the complaint is not being presented for any improper purpose, including but not limited to  
24 harassment;

25 (b) the claims are warranted under existing law or rule or by a nonfrivolous argument interpreting existing  
26 law;

27 (c) the factual contentions have evidentiary support or will likely have evidentiary support after a  
28 reasonable opportunity for further investigation or discovery.

29 (2) If, after notice and a reasonable opportunity to respond, the commissioner determines that subsection  
30 (1) has been violated, the commissioner may impose a sanction on the party submitting the complaint that

1 violated the rule or the party that is responsible for the violation.

2 (3) The commissioner may impose a fine of \$250 or the reasonable cost of attorney fees and staff time  
3 in responding to and investigating the matter, whichever is greater.

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5 NEW SECTION. **Section 5. Codification instruction.** [Sections 3 and 4] are intended to be codified  
6 as an integral part of Title 13, chapter 37, part 1, and the provisions of Title 13, chapter 37, part 1, apply to  
7 [sections 3 and 4].

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9 NEW SECTION. **Section 6. Effective date.** [This act] is effective July 1, 2015.

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