

HOUSE BILL NO. 38

INTRODUCED BY A. OLSON

1
2
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING MISDEMEANOR CRIMINAL PENALTIES AND
5 INCREASING CIVIL PENALTIES FOR LOBBYISTS AND LOBBYIST PRINCIPALS IN NONCOMPLIANCE WITH
6 TIMELY FILING OF REPORTS; PROVIDING FOR A HEARING WHEN A CIVIL PENALTY IS IMPOSED FOR
7 LATE FILING OF REPORTS; EXPANDING THE DUTIES OF THE COMMISSIONER OF POLITICAL
8 PRACTICES REGARDING VIOLATIONS OF LOBBYING LAWS; EXTENDING THE PERIOD TO BRING AN
9 ACTION; AMENDING SECTIONS 5-7-108, 5-7-209, AND 5-7-305, MCA; AND PROVIDING AN IMMEDIATE
10 EFFECTIVE DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 **Section 1.** Section 5-7-108, MCA, is amended to read:
15 **"5-7-108. Inspection of applications and reports--issuance of orders of noncompliance -- order**
16 **of noncompliance -- notification.** (1) Each application and report filed with the commissioner must be inspected
17 within 10 days after it is filed. If a person has not satisfied the provisions of this chapter, the commissioner shall
18 immediately notify the person of the noncompliance.
19 (2) An order of noncompliance may be issued when:
20 (a) it is determined that an application or report filed with the commissioner does not conform to the
21 requirements of this chapter; or
22 (b) a person has failed to file an application or report required by law.
23 (2)(3) The person notified of noncompliance shall submit the necessary information within 5 days after
24 receiving the notice of noncompliance. ~~Upon failure~~ If the person notified of noncompliance fails to submit the
25 required information within 5 days, the commissioner may initiate a civil ~~or criminal~~ action pursuant to the
26 procedures contained in 5-7-305."

27
28 **NEW SECTION. Section 2. Civil penalties for delays in filing -- option for hearing.** (1) In addition
29 to any other penalties or remedies established by this chapter, a person who fails to file a report within the time
30 required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the
31 report is filed or until the penalties reach a maximum of \$2,500 for each late report.

1 (2) The penalty imposed in subsection (1) is not subject to the procedural requirements of 5-7-305 and
2 must be applied if a person fails to meet the requirements of 5-7-108(3).

3 (3) A person against whom a civil penalty is imposed pursuant to subsection (1) may request, within 10
4 days of receiving a notice of imposition of a civil penalty, a hearing before the commissioner. Upon receipt of a
5 timely request, the commissioner shall hold an informal contested case hearing as provided in Title 2, chapter
6 4, part 6. At the hearing, the commissioner shall consider any factors or circumstances in mitigation and may
7 reduce or waive the civil penalty.

8 (4) All civil penalties imposed pursuant to this section must be deposited in the state general fund.
9

10 **Section 3.** Section 5-7-209, MCA, is amended to read:

11 **"5-7-209. Payments prohibited unless reported -- penalty for late filing, failure to report, or for**
12 **false statement.** A principal may not make payments to influence official action by any public official unless that
13 principal files the reports required under this chapter. A principal who fails to file a required report within the time
14 required by this chapter is subject to the ~~penalty~~ penalties provided in [section 2(1)] and 5-7-305 ~~as well as any~~
15 ~~civil action provided for in that section.~~ A principal who knowingly files a false, erroneous, or incomplete statement
16 commits the offense of unsworn falsification to authorities."
17

18 **Section 4.** Section 5-7-305, MCA, is amended to read:

19 **"5-7-305. Penalties and enforcement.** ~~(1) Any person violating the provisions of this chapter shall be~~
20 ~~deemed guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county~~
21 ~~jail not more than 6 months or by a fine not exceeding \$200, or both.~~

22 ~~(2)(1) Any~~ A person who violates any of the provisions of this chapter ~~shall be~~ is subject to civil penalties
23 of not less than \$250 and not more than \$7,500 according to the discretion of the district court, as court of original
24 jurisdiction. A lobbyist who violates any of the provisions of this chapter ~~shall~~ must have ~~his~~ the lobbyist's license
25 suspended or revoked according to the discretion of the court. Any public official holding elective office adjudged
26 in violation of the provisions of this ~~act~~ chapter is additionally subject to recall under the Montana Recall Act,
27 ~~2-16-601, et seq.~~ Title 2, chapter 16, part 6, and ~~such~~ the violation ~~shall constitute~~ constitutes an additional basis
28 for recall to those mentioned in 2-16-603(3).

29 ~~(3)(2)~~ (2) The attorney general, the commissioner, or the county attorney of the county in which the violation
30 takes place may bring ~~criminal or a civil actions~~ action in the name of the state for any appropriate ~~criminal or civil~~
31 remedy.

1 ~~(4)~~(3) If a ~~prosecution~~ civil penalty action is undertaken by the attorney general or the commissioner or
2 ~~any county attorney~~, all costs associated with the prosecution ~~shall~~ must be paid by the state of Montana.

3 ~~(5)~~(4) (a) Any individual who has notified ~~the commissioner~~, the attorney general, ~~the commissioner~~, and
4 the appropriate county attorney in writing that there is reason to believe that some portion of this chapter is being
5 violated may ~~himself~~ bring in the name of the state an action (~~hereinafter~~ referred to as a citizen's action)
6 authorized under this chapter if:

7 (i) the attorney general, the commissioner, or ~~and~~ the appropriate county attorney ~~have~~ has failed to
8 commence an action ~~hereunder~~ within ~~40~~ 90 days after ~~such~~ notice; and

9 (ii) ~~said attorneys then fail~~ the attorney general, the commissioner, or the county attorney fails to
10 commence an action within 10 days after receiving a written notice ~~delivered to them advising them~~ that a citizen's
11 action will be brought if ~~they do~~ the attorney general, the commissioner, or the county attorney does not bring an
12 action.

13 (b) Each notification ~~shall toll~~ tolls the applicable statute of limitations ~~applicable~~ until the expiration of
14 the waiting period.

15 (c) If the individual who brings the citizen's action prevails, ~~he shall be~~ the individual is entitled to be
16 reimbursed by the state of Montana for costs and ~~attorney's~~ attorney fees incurred; ~~provided that~~ However, in
17 the case of a citizen's action ~~which that~~ is dismissed and ~~which that~~ the court also finds was brought without
18 reasonable cause, the court may order the individual commencing the action to pay all costs of trial and
19 reasonable ~~attorney's~~ attorney fees incurred by the defendant.

20 ~~(6)~~(5) ~~No~~ A civil action may not be brought under this section more than 3 years after the occurrence of
21 the facts ~~which that~~ give rise to the action.

22 ~~(7)~~(6) All civil penalties imposed pursuant to this section ~~shall~~ must be deposited in the state general
23 fund.

24 ~~(8)~~(7) A hearing under this chapter ~~shall~~ must be held by the court unless the defendant-licensee
25 demands a jury trial. The trial ~~shall~~ must be held as soon as possible but at least 20 days after the filing of the
26 charges and ~~shall~~ must take precedence over all other matters pending before the court.

27 ~~(9)~~(8) If the court finds for the plaintiff, judgment ~~shall~~ must be rendered revoking or suspending the
28 license and the clerk of court shall file a certified copy of the judgment with the commissioner."
29

30 NEW SECTION. Section 5. Codification instruction. [Section 2] is intended to be codified as an
31 integral part of Title 5, chapter 7, and the provisions of Title 5, chapter 7, apply to [section 2].

