

SENATE BILL NO. 339

INTRODUCED BY COONEY, ELLINGSON, TAYLOR

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA VOLUNTARY CAMPAIGN SPENDING LIMITS ACT; PROVIDING DEFINITIONS; REQUIRING CANDIDATES FOR CERTAIN OFFICES TO DECIDE AT THE TIME OF FILING A DECLARATION OF NOMINATION OR DECLARATION OF INTENT AS A WRITE-IN CANDIDATE WHETHER TO PARTICIPATE IN THE MONTANA VOLUNTARY CAMPAIGN SPENDING LIMITS ACT; PROVIDING REDUCED FILING FEES FOR CANDIDATES THAT PARTICIPATE; SPECIFYING THE SPENDING LIMITS; PROVIDING FINES FOR PARTICIPATING CANDIDATES THAT EXCEED THE SPENDING LIMITS; ESTABLISHING A SPECIAL REVENUE ACCOUNT; PROVIDING FOR THE DISPOSITION OF THE FILING FEES AND FINES; REQUIRING NOTIFICATION OF OPPONENTS IF A PARTICIPATING CANDIDATE EXCEEDS THE SPENDING LIMITS; PROVIDING THAT CERTAIN ELECTION MATERIAL MUST INCLUDE STATEMENTS WITH RESPECT TO THE CANDIDATE'S PARTICIPATION; PROHIBITING A CANDIDATE'S NAME FROM BEING PLACED ON A BALLOT OR A CANDIDATE'S ELECTION FROM BEING CERTIFIED IF THE CANDIDATE FAILS TO PAY A FINE ASSESSED FOR EXCEEDING THE SPENDING LIMITS; AND AMENDING SECTIONS 13-10-201, 13-10-202, 13-10-211, 13-35-225, 13-37-126, AND 13-37-127, MCA."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 6] may be cited as the "Montana Voluntary Campaign Spending Limits Act".

NEW SECTION. **Section 2. Definition.** As used in [sections 1 through 6], the following definitions apply:

(1) "Election cycle" means the period of time beginning on the date a candidate files a declaration pursuant to 13-10-201 or 13-10-211 until the date of the general election.

(2) "Expenditure" has the meaning provided in 13-1-101, but only with respect to expenditures made by the candidate or the candidate's campaign committee.

(3) "Participating candidate" means a candidate who has filed an affidavit under 13-10-201(8) or 13-10-211(7) declaring the candidate's participation under [sections 1 through 6].

NEW SECTION. Section 3. Expenditure limits -- adjustments by rule. (1) Subject to subsection (2), total expenditures during an election cycle by a participating candidate may not exceed the following limits:

- (a) for governor, ~~\$1~~ \$2.5 million;
- (b) for an office elected statewide, other than for governor, ~~\$150,000~~ \$300,000;
- (c) for a public service commission member, ~~\$50,000~~ \$100,000;
- (d) for a state senator, ~~\$15,000~~ \$30,000;
- (e) for a state representative or county official, ~~\$7,500~~ \$15,000; and
- (f) for a district court judge, ~~\$20,000~~ \$40,000.

(2) The commissioner shall adopt rules to provide that, effective on July 1 of each odd-numbered year, the dollar amounts provided in subsection (1) are increased by the aggregate percentage increase during the 2 previous years in the consumer price index for all urban consumers as provided by the U.S. department of labor. The new amounts must be rounded up to the nearest \$100.

NEW SECTION. Section 4. Fines for exceeding limits. (1) For expenditures by participating candidates in excess of the limit provided in [section 3], the candidate must be assessed the fine specified in subsection (2).

(2) Subject to [section 6(3)], the fines are as follows:

- (a) for a candidate for governor whose expenditures exceed the limit by:
 - (i) less than \$2,000, 1% of the excess amount;
 - (ii) \$2,000 or more but less than \$10,000, 10% of the excess amount;
 - (iii) \$10,000 or more but less than \$20,000, 25% of the excess amount;
 - (iv) \$20,000 or more, 50% of the excess amount;
- (b) for a candidate for an office elected statewide, other than governor, whose expenditures exceed the limit by:
 - (i) less than \$500, 1% of the excess amount;
 - (ii) \$500 or more but less than \$1,000, 10% of the excess amount;
 - (iii) \$1,000 or more but less than \$5,000, 25% of the excess amount;
 - (iv) \$5,000 or more, 50% of the excess amount;
- (c) for a candidate for the public service commission whose expenditures exceed the limit by:
 - (i) less than \$250, 1% of the excess amount;
 - (ii) \$250 or more but less than \$750, 10% of the excess amount;

(iii) \$750 or more but less than \$2,000, 25% of the excess amount;

(iv) \$2,000 or more, 50% of the excess amount;

(d) for a candidate for state senator or district court judge whose expenditures exceed the limit by:

(i) less than \$100, 1% of the excess amount;

(ii) \$100 or more but less than \$500, 10% of the excess amount;

(iii) \$500 or more but less than \$1,000, 25% of the excess amount;

(iv) \$1,000 or more, 50% of the excess amount;

(e) for a candidate for state representative or county office whose expenditures exceed the limit by:

(i) less than \$50, 1% of the excess amount;

(ii) \$50 or more but less than \$250, 10% of the excess amount;

(iii) \$250 or more but less than \$500, 25% of the excess amount;

(iv) \$500 or more, 50% of the excess amount.

(3) A fine assessed under this section must be paid at the same time that the next campaign expenditure report that is due pursuant to this chapter is filed with the commissioner.

(4) Fines paid under this section must be deposited in the account established in [section 5].

NEW SECTION. Section 5. Special revenue account. There is an account in the state special revenue fund type to the credit of the office of the commissioner of political practices. Funds in the account may be used only by the office of the commissioner of political practices.

NEW SECTION. Section 6. Notification if limit exceeded. (1) A participating candidate who exceeds the expenditure limit provided in [section 3] shall notify the commissioner within 1 day after becoming aware that the limit was exceeded.

(2) Upon receiving notification under subsection (1), the commissioner shall notify the secretary of state, who shall notify all opposing participating candidates.

(3) A participating candidate opposed by a candidate who was also participating but exceeded the expenditure limits may elect to become a nonparticipant by paying the balance of the filing fee required under 13-10-202(1) for nonparticipating candidates. A CANDIDATE WHO HAS SIGNED A VOLUNTARY SPENDING LIMIT AFFIDAVIT HAS 10 DAYS FROM NOTIFICATION BY THE SECRETARY OF STATE PURSUANT TO SUBSECTION (2) TO VOID THE AFFIDAVIT, PAY THE DIFFERENCE BETWEEN THE FILING FEE REQUIRED OF A PARTICIPATING CANDIDATE AND A CANDIDATE WHO IS NOT PARTICIPATING IN THE VOLUNTARY SPENDING LIMIT, AND REVISE ELECTION MATERIALS PURSUANT TO 13-35-225(1)(B).

Upon paying the required filing fee, the candidate is no longer subject to the provisions of [sections 1 through 6].

Section 7. Section 13-10-201, MCA, is amended to read:

"13-10-201. Declaration for nomination -- affidavit regarding voluntary spending limits. (1) Each candidate in the primary election, except nonpartisan candidates filing under the provisions of chapter 14, shall send a declaration for nomination to the secretary of state or election administrator. Each candidate for governor shall send a joint declaration for nomination with a candidate for lieutenant governor.

(2) A declaration for nomination must be filed in the office of:

(a) the secretary of state for placement of a name on the ballot for the presidential preference primary, a congressional office, a state or district office to be voted for in more than one county, a member of the legislature, or a judge of the district court;

(b) the election administrator for a county, municipal, precinct, or district office, (other than a member of the legislature or judge of the district court), to be voted for in only one county.

(3) Each candidate shall sign the declaration and send with it the required filing fee or, in the case of an indigent candidate, send with it the documents required by 13-10-203. The declaration for nomination must be acknowledged by an officer empowered to acknowledge signatures or by the officer of the office at which the filing is made.

(4) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by the elector's party.

(5) (a) The declaration for nomination must be in the form and contain the information prescribed by the secretary of state.

(b) A person seeking nomination to the legislature shall provide the secretary of state with a street address, legal description, or road designation to indicate the person's place of residence. If a candidate for the legislature changes residence, the candidate shall, within 15 days after the change, notify the secretary of state on a form prescribed by the secretary of state.

(c) The secretary of state and election administrator shall furnish declaration for nomination forms to individuals requesting them.

(6) Declarations for nomination must be filed no sooner than 135 days before the election in which the office first appears on the ballot and no later than 5 p.m., 75 days before the date of the primary election.

(7) A declaration for nomination form may be sent by facsimile transmission, if a facsimile facility is available for use by the election administrator or by the secretary of state, delivered in person, or mailed to the

election administrator or to the secretary of state.

(8) A declaration for nomination filed by a candidate covered under subsection (2)(a), except a candidate for a federal office, must be accompanied by an affidavit, on a form prescribed by the secretary of state, declaring whether or not the candidate will participate in the Montana Voluntary Campaign Spending Limits Act provided for in [sections 1 through 6]. A CANDIDATE WHO FILES AN AFFIDAVIT HAS 10 DAYS AFTER ANY OPPONENT FILES TO RECONSIDER, VOID THE AFFIDAVIT, AND PAY THE DIFFERENCE IN FILING FEES BETWEEN THE AMOUNT PAID BY A CANDIDATE PARTICIPATING IN THE MONTANA VOLUNTARY CAMPAIGN SPENDING LIMITS ACT UNDER 13-10-202(2)(A) AND A CANDIDATE NOT PARTICIPATING PURSUANT TO 13-10-202(2)(B)."

Section 8. Section 13-10-202, MCA, is amended to read:

"13-10-202. Filing fees -- disposition. (1) Filing fees for a candidate not covered under subsection (2) are as follows:

- (1)(a) for offices having an annual salary of \$2,500 or less and candidates for the legislature, \$15;
- (2)(b) for county offices having an annual salary of more than \$2,500, 0.5% of the total annual salary;
- (3) for other offices having an annual salary of more than \$2,500, 1% of the total annual salary;
- (4)(c) for offices in which compensation is paid in fees, \$10;
- (5)(d) for officers of political parties, presidential electors, and officers who do not receive ~~no~~ a salary or fees, ~~no~~ a filing fee is not required.

(2) Filing fees for offices covered under 13-10-201(2)(a), are as follows:

(a) for a candidate for a federal office and for a candidate who is a participating candidate, as defined in [section 2], 1% of the annual salary paid to the office; and

(b) for a candidate who is not a participating candidate, as defined in [section 2], 2% of the annual salary paid to the office.

(3) For purposes of subsection (2), the annual salary paid for the office of a state legislator means the total base salary, as defined in 2-18-101, paid to a legislator during a 90-day legislative session.

(4) The filing fees paid pursuant to this section must be deposited as follows:

(a) a filing fee paid pursuant to subsection (1) or (2)(a) and 1% of the filing fee paid pursuant to subsection (2)(b) must be deposited to the credit of the secretary of state as provided in 2-15-405; and

(b) 1% of the filing fee paid pursuant to subsection (2)(b) must be deposited to the account provided for in [section 5]."

Section 9. Section 13-10-211, MCA, is amended to read:

"13-10-211. Declaration of intent for write-in candidates -- affidavit regarding voluntary spending limits. (1) Except as provided in subsection (5), a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. The declaration of intent must be filed with the secretary of state or election administrator, depending on where a declaration of nomination for the desired office is required to be filed under 13-10-201, or with the school district clerk for a school district office. Except as provided in subsections (2) and (3), the declaration must be filed no later than 5 p.m. on the 15th day before the election and must contain:

- (a) (i) the candidate's first and last names;
- (ii) the candidate's initials, if any, used instead of a first name, or first and middle name, and the candidate's last name;
- (iii) the candidate's nickname, if any, used instead of a first name, and the candidate's last name; and
- (iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate's last name;
- (b) the candidate's mailing address;
- (c) a statement declaring the candidate's intention to be a write-in candidate;
- (d) the title of the office sought;
- (e) the date of the election;
- (f) the date of the declaration; and
- (g) the candidate's signature.

(2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later than 5 p.m. on the day before the election if, after the deadline prescribed in subsection (1), a candidate for the office that the write-in candidate is seeking:

- (a) dies;
- (b) withdraws from the election; or
- (c) is charged with a felony offense.

(3) A person seeking to become a write-in candidate for a trustee position on a school board shall file a declaration of intent no later than 5 p.m. on the 26th day before the election.

(4) The secretary of state shall notify each election administrator of the names of write-in candidates who have filed a declaration of intent with the secretary of state. Each election administrator and school district clerk shall notify the election judges in the county or district of the names of write-in candidates who have filed a declaration of intent.

(5) The requirements in subsection (1) do not apply to a write-in candidate seeking election to an office for which a candidate has not filed a declaration or petition for nomination or a declaration of intent.

(6) A declaration of intent may be sent by facsimile transmission, if a facsimile facility is available for use by the election administrator or by the secretary of state, delivered in person, or mailed to the election administrator or to the secretary of state.

(7) A declaration of intent for an office requiring the declaration to be filed with the secretary of state, except for a declaration for a federal office, must be accompanied by an affidavit, on a form prescribed by the secretary of state, declaring whether or not the candidate will participate in the Montana Voluntary Campaign Spending Limits Act provided for in [sections 1 through 6]."

Section 10. Section 13-35-225, MCA, is amended to read:

"13-35-225. Election materials not to be anonymous -- inclusion of spending limit information.

(1) (a) Whenever a person makes an expenditure for the purpose of financing communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, or other form of general political advertising, the communication must clearly and conspicuously state the name and address of the person who made or financed the expenditure for the communication, including in the case of a political committee, the name and address of the treasurer. Communications in a partisan election financed by a candidate or a political committee organized on the candidate's behalf must state the candidate's party affiliation or include the party symbol.

(b) If a candidate has decided not to participate in the Montana Voluntary Campaign Spending Limits Act provided for in [sections 1 through 6], material covered under subsection (1)(a) must state that the candidate is not a participant in the Montana Voluntary Campaign Spending Limits Act. If the candidate is a participant but has exceeded the spending limits, the material must include a statement that the candidate exceeded the spending limits established in the Montana Voluntary Campaign Spending Limits Act.

(2) If a document or other article of advertising is too small for the requirements of subsection (1) to be conveniently included, the person financing the communication shall file a copy of the article with the commissioner, together with the required information, prior to its public distribution.

(3) If information required in subsection (1) is inadvertently omitted or not printed, upon discovering the omission, the person financing the communication shall file notification of the omission with the commissioner within 5 days and make every reasonable effort to bring the material into compliance with subsection (1)."

Section 11. Section 13-37-126, MCA, is amended to read:

"13-37-126. Names not to be printed on ballot. (1) The name of a candidate may not be printed on the official ballot for an election if the candidate or a treasurer for a candidate fails to file any statement or report as required by this chapter or if the candidate has failed to pay a fine assessed pursuant to [section 4] incurred prior to the printing of the ballot.

(2) A vacancy on an official ballot under this section may be filled in the manner provided by law, but not by the name of the same candidate.

(3) In carrying out the mandate of this section, the commissioner shall, by a written statement, notify the secretary of state or the election administrator that a candidate or a candidate's treasurer has not complied with the provisions of this chapter, as described in subsection (1), and that a candidate's name should not be printed on the official ballot. The commissioner shall provide this notification by the ballot certification deadline provided in 13-10-208 for primary elections and by no later than 7 days before the ballot certification deadline provided in 13-12-201 for general elections."

Section 12. Section 13-37-127, MCA, is amended to read:

"13-37-127. Withholding of certificates of nomination or election. (1) A certificate of election may not be granted to any candidate until the candidate or the candidate's treasurer has filed the reports and statements that must be filed pursuant to the provisions of this chapter. A candidate for an elective office may not assume the powers and duties of that office until the candidate has received a certificate of election as provided by law. A certificate of election may only be issued by the public official responsible for issuing a certificate or commission of election.

(2) A certificate of election may not be granted to a candidate who has not paid a fine assessed pursuant to [section 4].

~~(2)~~(3) In carrying out the mandate of this section, the commissioner must, by written statement, notify the public official responsible for issuing a certificate of nomination or election that a candidate or the candidate's treasurer has complied with the provisions of this chapter as described in subsection (1) and that a certificate of nomination or election may be issued."

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

NEW SECTION. **Section 14. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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