

SENATE BILL NO. 452
INTRODUCED BY M. TAYLOR

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT CERTAIN ELECTION MATERIALS AND AN AFFIDAVIT BE FILED WITH THE COMMISSIONER OF POLITICAL PRACTICES PRIOR TO BEING MADE PUBLIC; FURTHER DELINEATING WHAT CONSTITUTES POLITICAL LIBEL; DEFINING "CANDIDATE" FOR PURPOSES OF APPLYING POLITICAL LIBEL PROVISIONS; INCREASING THE CIVIL PENALTY FOR POLITICAL LIBEL; AND AMENDING SECTIONS 13-37-129, 13-37-130, AND 13-37-131, MCA."

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

NEW SECTION. Section 1. Election materials and affidavit to be filed before public dissemination.

(1) Except as provided in subsection (2), a person financing the production of election materials described in 13-35-225 affecting a campaign for a statewide office shall file a copy of the materials with the commissioner at least 4 days, not including Saturdays, Sundays, or federal or state holidays, prior to the materials being published or broadcast.

(2) Election materials being published or broadcast in the last week of the election must be filed as provided in subsection (1) at least 2 working days, not including Saturdays, Sundays, or federal or state holidays, prior to the materials being published or broadcast.

(3) The materials filed must be accompanied by an affidavit, appropriately signed and notarized, stating that the content of the materials, including facts or allegations, has been checked for accuracy. The affidavit must be signed by the person making the expenditure for producing the information. In the case of election materials proposed by a political committee or political party, the affidavit must be signed by the treasurer of the committee or party. A person making a false affirmation under this subsection is subject to the penalty for false swearing provided in 45-7-202.

(4) The commissioner may charge a fee, which may be set by rule, to defray the cost of providing copies of materials filed and shall deposit the fee to an enterprise fund, provided for in 17-2-102, to the credit of the office of commissioner of political practices.

Section 2. Section 13-37-129, MCA, is amended to read:

"13-37-129. Liability and disposition of fines. In determining the amount of liability under 13-37-128

or 13-37-131, the court may take into account the seriousness of a violation and the degree of culpability of the defendant. If a judgment is entered against the defendant or defendants in an action brought by a county attorney in a court other than a justice's court, the county ~~shall~~ must receive 50% of the amount recovered. The remaining 50% ~~shall~~ must be deposited in the general fund of the state. In an action brought by the commissioner in a court other than a justice's court, the entire amount recovered ~~shall~~ must be paid to the general fund of the state."

Section 3. Section 13-37-130, MCA, is amended to read:

"13-37-130. Limitation of action. An action may not be brought under 13-37-128 ~~and~~, 13-37-129, or 13-37-131 more than 4 years after the occurrence of the facts that give rise to the action. No more than one judgment against a particular defendant may be had on a single state of facts. The civil action created in 13-37-128 and 13-37-129 is the exclusive remedy for violation of the contribution, expenditure, and reporting provisions of this chapter. These provisions are not subject to the misdemeanor penalties of 13-35-103 but may be a ground for contest of election or removal from office as provided in 13-35-106(3) and Title 13, chapter 36."

Section 4. Section 13-37-131, MCA, is amended to read:

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

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

(3) During the course of any campaign for nomination or election to public office, a person or candidate may not, by means of campaign materials, including election materials described in 13-35-225, sample ballots, a public speech, a press release, or other communication, knowingly or with reckless disregard of whether the assertion is false and with intent to affect the outcome of the election, do any of the following:

(a) use the title of an office not currently held by a candidate in a manner that implies that the candidate does currently hold that office or use the term "reelect" when the candidate has never been elected at a primary, general, or special election to the office;

(b) make a false statement concerning the formal schooling or training completed or attempted by a candidate, including a degree, diploma, certificate, scholarship, grant, award, prize, or honor received, earned,

or held by a candidate, or about the period of time during which a candidate attended any school, college, community technical school, or institution;

(c) make a false statement concerning the professional, occupational, or vocational license held by a candidate or concerning any position that the candidate held for which the candidate received a salary or wages;

(d) make a false statement that a candidate or public official has been indicted or convicted of a theft offense, extortion, or other crime involving financial corruption or moral turpitude;

(e) make a statement that a candidate has been indicted for any crime or has been the subject of a finding by the commissioner without disclosing the outcome of any legal proceeding resulting from the indictment or finding;

(f) make a false statement that a candidate or official has a record of treatment or confinement for a mental disorder;

(g) make a false statement that a candidate or official has been subjected to military discipline for criminal misconduct or been dishonorably discharged from the armed services;

(h) falsely identify the source of a statement, issue a statement under the name of another person without authorization, or falsely state the endorsement of or opposition to a candidate by a person or publication;

or

(i) post, publish, circulate, distribute, or otherwise disseminate a false statement concerning a candidate, when the person knows the statement to be false or with reckless disregard as to whether the statement was false or not, if the statement is designed to promote the election, nomination, or defeat of a candidate.

~~(3)~~(4) For the purposes of this section;

(a) the public voting record of a candidate who was previously a member of the legislature includes a vote of that candidate recorded in committee minutes or in journals of the senate or the house of representatives;
and

(b) Failure failure of a person to verify a public voting record or a statement specified in subsection (3) is evidence of the person's reckless disregard if the statement made by the person or the information provided to the candidate is false.

(5) As used in this section, "candidate" means an individual seeking nomination or election to any state public office or to a public office of any political subdivision of the state.

~~(4)~~(6) A person violating ~~subsection (1) or (2)~~ this section is liable in a civil action brought by the commissioner or county attorney pursuant to 13-37-124 for an amount up to ~~\$1,000~~ \$5,000. An action pursuant to this section is subject to the provisions of 13-37-129 and 13-37-130."

NEW SECTION. **Section 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 13, chapter 37, and the provisions of Title 13, chapter 37, apply to [section 1].

NEW SECTION. **Section 6. 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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