

HOUSE BILL NO. 225

INTRODUCED BY KOOPMAN, LANGE, MCGILLVRAY

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE ENFORCEMENT OF THE STANDARDS OF CONDUCT AND CAMPAIGN PRACTICES STATUTES IN CERTAIN SITUATIONS BY AN INDIVIDUAL OTHER THAN THE COMMISSIONER OF POLITICAL PRACTICES OR A COUNTY ATTORNEY; PROVIDING FOR APPROPRIATE RELIEF FROM A DISTRICT COURT, INCLUDING COSTS AND ATTORNEY FEES; AMENDING SECTIONS 2-2-103, 2-2-136, 2-2-144, 13-35-226, 13-37-111, 13-37-113, 13-37-115, 13-37-116, 13-37-121, 13-37-124, 13-37-125, 13-37-128, 13-37-129, 13-37-130, AND 13-37-131, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Enforcement of complaint by civil action -- venue -- relief -- jurisdiction.** (1) If a civil ~~or administrative~~ action is not ~~taken~~ FILED, OR A CONCLUSIVE ADMINISTRATIVE ORDER IS NOT ISSUED, within 30 days by the commissioner of political practices pursuant to 2-2-136 on a written complaint made to the commissioner during an election campaign period or within 30 days after an election alleging a violation of this part, the person making the written complaint to the commissioner may, within 90 days of the end of that 30-day period in which the commissioner has not taken action, bring a civil action in district court to enforce a provision of this part or rules adopted by the commissioner pursuant to any of those provisions.

(2) A person filing a complaint with the district court pursuant to subsection (1) shall file the complaint in the district court of the county in which the violation is alleged to have occurred and shall file an affidavit with the complaint or file a verified complaint alleging the failure of the commissioner of political practices to act on the written complaint with the commissioner. The complaint filed in district court must include a copy of the complaint made to the commissioner of political practices and the date on which that complaint was made to the commissioner.

(3) An action brought in district court by a complainant pursuant to this section may be brought for the enforcement of a provision of this part by appropriate equitable relief pursuant to Title 27, chapter 19, or for the collection of a civil or administrative penalty in an amount that could have been collected by the commissioner of political practices. A party bringing an action for a civil penalty pursuant to this section that could have been brought by the commissioner of political practices may retain a civil penalty collected pursuant to this section.

A complainant who substantially prevails in the action in the district court or on an appeal must be awarded the complainant's costs and reasonable attorney fees incurred for purposes of the trial and any appeal. A court may impose sanctions if the court determines that the action was frivolous or intended for harassment, and sanctions imposed pursuant to this subsection do not prevent sanctions of a different kind from being imposed under Rule 11 of the Montana Rules of Civil Procedure.

(4) An action brought pursuant to this section may be combined with any other lawful cause of action arising between the parties involving the facts of the alleged violation. An action brought pursuant to this section has priority over other matters then pending before the district court except criminal matters and those civil actions in which a party has requested equitable relief for the protection of an individual from bodily harm.

(5) If a complaint is filed in district court pursuant to this section, the complainant shall provide a copy of the complaint to the commissioner of political practices. During the pendency of the action before the district court and before the supreme court if an appeal is taken, the commissioner of political practices is without jurisdiction to act on the written complaint made to either court but resumes jurisdiction if the complaint before the district court is finally adjudicated, dismissed, or otherwise finally disposed of by the district court and an appeal is not taken or any appeal is finally resolved. The commissioner of political practices may not grant to a complainant before the commissioner the same relief or substantially the same relief as a district court or the supreme court has granted to a complainant pursuant to this section.

(6) A person filing a civil complaint with the district court pursuant to this section may not bring a criminal action or initiate an investigation pursuant to this section.

(7) A court order or judgment entered pursuant to this section against a defendant or respondent is an affirmative defense to a civil action or charge brought by the commissioner of political practices involving the identical complainant, facts, and relief as in an action brought pursuant to this section.

Section 2. Section 2-2-103, MCA, is amended to read:

"2-2-103. Public trust -- public duty. (1) The holding of public office or employment is a public trust, created by the confidence that the electorate reposes in the integrity of public officers, legislators, and public employees. A public officer, legislator, or public employee shall carry out the individual's duties for the benefit of the people of the state.

(2) A public officer, legislator, or public employee whose conduct departs from the person's public duty is liable to the people of the state and is subject to the penalties provided in this part for abuse of the public's trust.

(3) This part sets forth various rules of conduct, the transgression of any of which is a violation of public

duty, and various ethical principles, the transgression of any of which must be avoided.

(4) (a) The enforcement of this part for:

(i) state officers, legislators, and state employees is provided for in 2-2-136 and [section 1];

(ii) legislators, involving legislative acts, is provided for in 2-2-135 and for all other acts is provided for in 2-2-136;

(iii) local government officers and employees is provided for in 2-2-144.

(b) ~~Any~~ Except as provided in [section 1], any money collected in the civil actions that is not reimbursement for the cost of the action must be deposited in the general fund of the unit of government."

Section 3. Section 2-2-136, MCA, is amended to read:

"2-2-136. Enforcement for state officers, legislators, and state employees -- referral of complaint involving county attorney. (1) (a) A person alleging a violation of this part by a state officer, legislator, or state employee may file a complaint with the commissioner of political practices or with a district court pursuant to [section 1]. The commissioner does not have jurisdiction for a complaint concerning a legislator if a legislative act is involved in the complaint. ~~The~~ Except as provided in [section 1], the commissioner also has jurisdiction over complaints against a county attorney that are referred by a local government review panel pursuant to 2-2-144 or filed by a person directly with the commissioner pursuant to 2-2-144(6). The commissioner may request additional information from the complainant or the person who is the subject of the complaint to make an initial determination of whether the complaint states a potential violation of this part.

(b) ~~The~~ Subject to the time limitation provided in [section 1], the commissioner may dismiss a complaint that is frivolous, does not state a potential violation of this part, or does not contain sufficient allegations to enable the commissioner to determine whether the complaint states a potential violation of this part. If the issues presented in a complaint have been addressed and decided in a prior decision and the commissioner determines that ~~no~~ additional factual development is ~~necessary~~ unnecessary, the commissioner may issue a summary decision without holding an informal contested case hearing on the complaint.

(c) Except as provided in [section 1] and subsection (1)(b) of this section, if the commissioner determines that the complaint states a potential violation of this part, the commissioner shall hold an informal contested case hearing on the complaint as provided in Title 2, chapter 4, part 6. The commissioner shall issue a decision based upon the record established before the commissioner.

(2) ~~If~~ Subject to the time limitation provided in [section 1], if the commissioner determines that a violation of this part has occurred, the commissioner may impose an administrative penalty of not less than \$50 or more

than \$1,000, and if the violation was committed by a state employee, the commissioner may also recommend that the employing state agency discipline the employee. The employing entity of a state employee may take disciplinary action against an employee for a violation of this part, regardless of whether the commissioner makes a recommendation for discipline. The commissioner may assess the costs of the proceeding against the person bringing the charges if the commissioner determines that a violation did not occur or against the officer or employee if the commissioner determines that a violation did occur.

(3) A party may seek judicial review of the commissioner's decision, as provided in chapter 4, part 7, of this title, after a hearing, a dismissal, or a summary decision issued pursuant to subsection (1)(b).

(4) Except for records made public in the course of a hearing held under subsection (1) and records that are open for public inspection pursuant to Montana law, a complaint and records obtained or prepared by the commissioner in connection with an investigation or complaint are confidential documents and are not open for public inspection. ~~The~~ Except as provided in [section 1], the complainant and the person who is the subject of the complaint shall maintain the confidentiality of the complaint and any related documents released to the parties by the commissioner until the commissioner issues a decision. However, the person who is the subject of a complaint may waive, in writing, the right of confidentiality provided in this subsection. If a waiver is filed with the commissioner or if a complaint is filed in district court pursuant to [section 1], the complaint and any related documents must be open for public inspection. The commissioner's decision issued after a hearing is a public record open to inspection.

(5) When a complaint is filed, the commissioner may issue statements or respond to inquiries to confirm that a complaint has been filed, to identify against whom it has been filed, and to describe the procedural aspects and status of the case.

(6) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this part."

Section 4. Section 2-2-144, MCA, is amended to read:

"2-2-144. Enforcement for local government. (1) Except as provided in subsections (5) and (6), a person alleging a violation of this part by a local government officer or local government employee shall notify the county attorney of the county where the local government is located. The county attorney shall request from the complainant or the person who is the subject of the complaint any information necessary to make a determination concerning the validity of the complaint.

(2) ~~ff~~ Subject to the time limitation provided in [section 1], if the county attorney determines that the complaint is justified, the county attorney may bring an action in district court seeking a civil fine of not less than

\$50 or more than \$1,000. If the county attorney determines that the complaint alleges a criminal violation, the county attorney shall bring criminal charges against the officer or employee.

(3) If the county attorney declines to bring an action under this section, the person alleging a violation of this part may file a civil action in district court seeking a civil fine of not less than \$50 or more than \$1,000. In an action filed under this subsection, the court may assess the costs and attorney fees against the person bringing the charges if the court determines that a violation did not occur or against the officer or employee if the court determines that a violation did occur. The court may impose sanctions if the court determines that the action was frivolous or intended for harassment.

(4) The employing entity of a local government employee may take disciplinary action against an employee for a violation of this part.

(5) (a) A local government may establish a three-member panel to review complaints alleging violations of this part by officers or employees of the local government. The local government shall establish procedures and rules for the panel. The members of the panel may not be officers or employees of the local government. The panel shall review complaints and may refer to the county attorney complaints that appear to be substantiated. If the complaint is against the county attorney, the panel shall refer the matter to the commissioner of political practices and the complaint must then be processed by the commissioner pursuant to 2-2-136, subject to the time limitation provided in [section 1].

(b) In a local government that establishes a panel under this subsection (5), a complaint must be referred to the panel prior to making a complaint to the county attorney.

(6) If a local government review panel has not been established pursuant to subsection (5), a person alleging a violation of this part by a county attorney shall file the complaint with the commissioner of political practices pursuant to 2-2-136."

NEW SECTION. Section 5. Enforcement of complainant by civil action -- venue -- relief -- jurisdiction of commissioner and county attorney. (1) If a civil ~~or administrative~~ action is not ~~taken~~ FILED, OR A CONCLUSIVE ADMINISTRATIVE ORDER IS NOT ISSUED, within 30 days by the commissioner or a county attorney pursuant to 13-37-111, 13-37-113, or 13-37-124 on a written complaint made to the commissioner or county attorney during an election campaign period or within 30 days after an election alleging a violation of this chapter, the person making the written complaint to the commissioner or county attorney may, within 90 days of the end of that 30-day period in which the commissioner or county attorney has not taken action, bring a civil action in district court to enforce a provision of this chapter or rules adopted by the commissioner pursuant to any of those

provisions. However, in the case of a county attorney receiving notice from the commissioner pursuant to 13-37-124, a complainant may not bring a civil action until 30 days after the county attorney received that notice pursuant to that section and has not taken action.

(2) A person filing a complaint with the district court pursuant to subsection (1) shall file the complaint in the district court of the county in which the violation is alleged to have occurred and shall file an affidavit with the complaint or file a verified complaint alleging the failure of the commissioner or county attorney to act on the written complaint with the commissioner or county attorney. The complaint filed in district court must include a copy of the complaint made to the commissioner or county attorney and the date on which that complaint was made to the commissioner or county attorney.

(3) An action brought in district court by a complainant pursuant to this section may be brought for the enforcement of a provision of this chapter by appropriate equitable relief pursuant to Title 27, chapter 19, or for the collection of a civil or administrative penalty in an amount that could have been collected by the commissioner or a county attorney. A party bringing an action for a civil penalty pursuant to this section that could have been brought by the commissioner or a county attorney may retain a civil penalty collected pursuant to this section. A complainant who substantially prevails in the action in the district court or on an appeal must be awarded the complainant's costs and reasonable attorney fees incurred for purposes of the trial and any appeal. A court may impose sanctions if the court determines that the action was frivolous or intended for harassment, and sanctions imposed pursuant to this subsection do not prevent sanctions of a different kind from being imposed under Rule 11 of the Montana Rules of Civil Procedure.

(4) An action brought pursuant to this section may be combined with any other lawful cause of action arising between the parties involving the facts of the alleged violation. An action brought pursuant to this section has priority over other matters then pending before the district court except criminal matters and those civil actions in which a party has requested equitable relief for the protection of an individual from bodily harm.

(5) If a complaint is filed in district court pursuant to this section, the complainant shall provide a copy of the complaint to the commissioner. During the pendency of the action before the district court and before the supreme court if an appeal is taken, the commissioner or the county attorney with whom the written complaint was filed are without jurisdiction to act on the written complaint made to either court but resume jurisdiction if the complaint before the district court is finally adjudicated, dismissed, or otherwise finally disposed of by the district court and an appeal is not taken or any appeal is finally resolved. The commissioner may not grant to a complainant before the commissioner the same relief or substantially the same relief as a district court or the supreme court has granted to a complainant before the commissioner pursuant to this section.

(6) In the case of a referral to the county attorney pursuant to 13-37-124(1) on which the county attorney fails to act, the 30-day period provided for in subsection (1) of this section begins on the date that the written complaint is made to the commissioner.

(7) A person filing a civil complaint with the district court pursuant to this section may not bring a criminal action or initiate an investigation pursuant to this section. A civil action brought by a complainant pursuant to this section does not deprive the commissioner or the county attorney of their authority to initiate a criminal investigation or bring a criminal action.

(8) A court order or judgment entered pursuant to this section against a defendant or respondent is an affirmative defense to a civil action or charge brought by the commissioner or a county attorney involving the identical complainant, facts, and relief as in an action brought pursuant to this section.

Section 6. Section 13-35-226, MCA, is amended to read:

"13-35-226. Unlawful acts of employers and employees. (1) It is unlawful for any employer, in paying employees the salary or wages due them, to include with their pay the name of any candidate or any political mottoes, devices, or arguments containing threats or promises, express or implied, calculated or intended to influence the political opinions or actions of the employees.

(2) It is unlawful for an employer to exhibit in a place where the employer's workers or employees may be working any handbill or placard containing:

(a) any threat, promise, notice, or information that, in case any particular ticket or political party, organization, or candidate is elected:

(i) work in the employer's place or establishment will cease, in whole or in part, or will be continued or increased;

(ii) the employer's place or establishment will be closed; or

(iii) the salaries or wages of the workers or employees will be reduced or increased; or

(b) other threats or promises, express or implied, intended or calculated to influence the political opinions or actions of the employer's workers or employees.

(3) A person may not coerce, command, or require a public employee to support or oppose any political committee, the nomination or election of any person to public office, or the passage of a ballot issue.

(4) A public employee may not solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue while on the job or at the place of employment. However, subject to 2-2-121, this section does not restrict the right of a public employee to perform

activities properly incidental to another activity required or authorized by law or to express personal political views.

(5) A person who violates this section is liable in a civil action:

(a) authorized by 13-37-128; and brought by the commissioner of political practices or a county attorney pursuant to 13-37-124 and 13-37-125; or

(b) authorized by [section 5] and brought by a person pursuant to that section."

Section 7. Section 13-37-111, MCA, is amended to read:

"13-37-111. Investigative powers and duties -- recusal. (1) ~~The~~ Except as provided in [section 5], the commissioner is responsible for investigating all of the alleged violations of the election laws contained in chapter 35 of this title or this chapter and in conjunction with the county attorneys is responsible for enforcing these election laws.

(2) ~~The~~ Subject to the time limitation provided in [section 5], the commissioner may:

(a) investigate all statements filed pursuant to the provisions of chapter 35 of this title or this chapter and shall investigate alleged failures to file any statement or the alleged falsification of any statement filed pursuant to the provisions of chapter 35 of this title or this chapter. Upon the submission of a written complaint by any individual, the commissioner shall investigate any other alleged violation of the provisions of chapter 35 of this title, this chapter, or any rule adopted pursuant to chapter 35 of this title or this chapter.

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

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

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

(4) (a) If the commissioner is recused pursuant to this section, the commissioner shall appoint a deputy, subject to subsection (4)(b).

(b) The deputy:

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

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

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

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

(5) The appointment of the deputy is effectuated by a contract between the commissioner and the deputy. The contract must specify the deputy's term of appointment, which must be temporary, the matter assigned to the deputy, the date on which the matter assigned must be concluded by the deputy, and any other items relevant to the deputy's appointment, powers, or duties."

Section 8. Section 13-37-113, MCA, is amended to read:

"13-37-113. Hiring of attorneys -- prosecutions. The commissioner may hire or retain attorneys who are properly licensed to practice before the supreme court of the state of Montana to prosecute violations of chapter 35 of this title or this chapter. Any attorney retained or hired shall exercise the powers of a special attorney general, and the attorney may prosecute, subject to the control and supervision of the commissioner, ~~and~~ the provisions of 13-37-124 and 13-37-125, and the time limitation provided in [section 5], any criminal or civil action arising out of a violation of any provision of chapter 35 of this title or this chapter. All prosecutions must be brought in the state district court for the county in which a violation has occurred or in the district court for Lewis and Clark County. ~~The~~ Subject to the time limitation provided in [section 5], the authority to prosecute as prescribed by this section includes the authority to:

(1) institute proceedings for the arrest of persons charged with or reasonably suspected of criminal violations of chapter 35 of this title or this chapter;

(2) attend and give advice to a grand jury when cases involving criminal violations of chapter 35 of this title or this chapter are presented;

(3) draw and file indictments, informations, and criminal complaints;

(4) prosecute all actions for the recovery of debts, fines, penalties, or forfeitures accruing to the state or county from persons convicted of violating chapter 35 of this title or this chapter; and

(5) do any other act necessary to successfully prosecute a violation of any provision of chapter 35 of this title or this chapter."

Section 9. Section 13-37-115, MCA, is amended to read:

"13-37-115. Orders of noncompliance. ~~The~~ Subject to the time limitation provided in [section 5], the

commissioner may issue orders of noncompliance as prescribed by 13-37-121."

Section 10. Section 13-37-116, MCA, is amended to read:

"13-37-116. Exercise of powers. The Subject to the time limitation provided in [section 5], the commissioner may exercise all of the powers conferred upon ~~him~~ the commissioner by law in any jurisdiction or political subdivision of the state."

Section 11. Section 13-37-121, MCA, is amended to read:

"13-37-121. Inspection of statements and reports -- issuance of orders of noncompliance. (1) Each statement and report filed with the commissioner during an election or within 60 days after the election must be inspected within 20 days after the statement or report is filed. Intermediate Saturdays, Sundays, and holidays must be excluded in the computation of time under this section. ~~If~~ Subject to the time limitation provided in [section 5], if a person has not satisfied the provisions of this chapter, the commissioner shall immediately notify the person of the noncompliance. Notification by the commissioner may be accomplished by written or electronic communication or by telephone. If the person fails to comply after the notification, the commissioner shall issue an order of noncompliance as provided in this section.

(2) ~~An~~ Subject to the time limitation provided in [section 5], an order of noncompliance may be issued when:

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

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

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

(4) If an order of noncompliance is issued during any period other than that described in subsection (3), a candidate or political committee shall submit the necessary information within 10 days after receiving the order of noncompliance. Upon a failure to submit the required information within the time specified, the appropriate county attorney or the commissioner shall, subject to the time limitation provided in [section 5], initiate a civil or

criminal action pursuant to the procedures outlined in 13-37-124 and 13-37-125.

(5) After a complaint is filed with the commissioner pursuant to 13-37-111, the procedure described in this section regarding the provision of notice and issuance of orders of noncompliance is not a prerequisite to initiation of any other administrative or judicial action authorized under chapter 35 of this title or this chapter."

Section 12. Section 13-37-124, MCA, is amended to read:

"13-37-124. Consultation and cooperation with county attorney. (1) ~~Whenever~~ Subject to the time limitation provided in [section 5], whenever the commissioner determines that there appears to be sufficient evidence to justify a civil or criminal prosecution under chapter 35 of this title or this chapter, the commissioner shall notify the county attorney of the county in which the alleged violation occurred and shall arrange to transmit to the county attorney all information relevant to the alleged violation. If the county attorney fails to initiate the appropriate civil or criminal action within 30 days after receiving notification of the alleged violation, the commissioner may, subject to the time limitation in [section 5], then initiate the appropriate legal action.

(2) A county attorney may, at any time prior to the expiration of the 30-day time period specified in [section 5] and subsection (1) of this section, waive the right to prosecute, and subject to the time limitation provided in [section 5], the waiver authorizes the commissioner to initiate the appropriate civil or criminal action.

(3) The provisions of subsection (1) do not apply to a situation in which the alleged violation has been committed by the county attorney of a county. In this instance, subject to the time limitations provided in [section 5], the commissioner is authorized to directly prosecute any alleged violation of chapter 35 of this title or this chapter.

(4) If a prosecution is undertaken by the commissioner, all court costs associated with the prosecution must be paid by the state of Montana, and all fines and forfeitures imposed pursuant to a prosecution by the commissioner, except those paid to or imposed by a justice's court, must be deposited in the state general fund."

Section 13. Section 13-37-125, MCA, is amended to read:

"13-37-125. Powers of county attorney to investigate. (1) Nothing in chapter 35 of this title or this chapter prevents a county attorney from inspecting any records, accounts, or books ~~which~~ that must be kept pursuant to the provisions of chapter 35 of this title or this chapter that are held by a political committee or candidate involved in an election to be held within the county. However, the inspections must be conducted during reasonable office hours.

(2) A county attorney may, subject to the time limitation provided in [section 5]:

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

Section 14. Section 13-37-128, MCA, is amended to read:

"13-37-128. Cause of action created. (1) A person who intentionally or negligently violates any of the reporting provisions of this chapter is liable in a civil action brought by the commissioner, ~~or by~~ a county attorney pursuant to the provisions ~~outlined~~ established in 13-37-124 and 13-37-125, ~~or by a person pursuant to [section 5]~~ for an amount up to \$500 or three times the amount of the unlawful contributions or expenditures, whichever is greater.

(2) A person who makes or receives a contribution or expenditure in violation of 13-35-225, 13-35-227, 13-35-228, or this chapter or who violates 13-35-226 is liable in a civil action brought by the commissioner, ~~or by~~ a county attorney pursuant to the provisions ~~outlined~~ established in 13-37-124 and 13-37-125, ~~or by a person pursuant to [section 5]~~ for an amount up to \$500 or three times the amount of the unlawful contribution or expenditure, whichever is greater."

Section 15. 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, 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. In an action brought by a person pursuant to [section 5], the amount recovered may be retained by the person bringing the action as provided in that section."

Section 16. 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 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, and [section 5] 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~~ grounds for ~~contest of~~ contesting an election or for removal from office as provided in 13-35-106(3) and Title 13, chapter 36."

Section 17. 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) For the purposes of this section, 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. Failure of a person to verify a public voting record is evidence of the person's reckless disregard if the statement made by the person or the information provided to the candidate is false.

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

NEW SECTION. Section 18. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 2, chapter 2, part 1, and the provisions of Title 2, chapter 2, part 1, apply to [section 1].

(2) [Section 5] 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 5].

NEW SECTION. Section 19. Applicability. [This act] applies to a written complaint made to the commissioner of political practices pursuant to Title 2, chapter 2, part 1, or to the commissioner of political

practices or a county attorney pursuant to Title 13, chapter 37, on or after October 1, 2007.

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