

HOUSE BILL NO. 752
INTRODUCED BY J. SINRUD

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A STATE ETHICS COMMISSION TO REPLACE THE COMMISSIONER OF POLITICAL PRACTICES; PROVIDING FOR THE APPOINTMENT OF THE STATE ETHICS COMMISSION; PROVIDING FOR THE FUNCTIONS OF THE STATE ETHICS COMMISSION; REVISING THE DEFINITION OF GIFT OF SUBSTANTIAL VALUE; INCREASING CIVIL FINES FOR ETHICS VIOLATIONS; AMENDING SECTIONS 2-2-102, 2-2-104, 2-2-106, 2-2-121, 2-2-131, 2-2-136, 2-2-144, 5-7-102, 5-7-103, 5-7-108, 5-7-111, 5-7-112, 5-7-201, 5-7-202, 5-7-207, 5-7-208, 5-7-212, 5-7-305, 5-7-306, 7-4-2611, 13-27-111, 13-27-112, 13-27-113, 13-35-225, 13-35-226, 13-35-302, 13-37-101, 13-37-111, 13-37-112, 13-37-113, 13-37-114, 13-37-115, 13-37-116, 13-37-117, 13-37-121, 13-37-124, 13-37-126, 13-37-127, 13-37-128, 13-37-129, 13-37-131, 13-37-226, 13-37-227, 13-37-229, 13-37-230, AND 13-37-250, MCA; REPEALING SECTIONS 2-15-411, 13-37-102, 13-37-103, 13-37-104, 13-37-105, 13-37-106, 13-37-107, AND 13-37-108, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. **Section 1. State ethics commission.** (1) There is a state ethics commission that consists of four members. One member must be appointed by the president of the senate, one by the minority leader of the senate, one by the speaker of the house, and one by the minority leader of the house. The members of the commission shall elect a presiding officer from among the members. A member of the commission may not be a public officer or an employee of the state or a political subdivision of the state or the spouse or child of a public officer or an employee of the state or a political subdivision of the state. Members shall serve staggered 4-year terms and may not be reappointed to a succeeding term. A vacancy on the commission must be filled by an appointment by the appropriate appointing authority that appointed the vacating commissioner.

(2) The state ethics commission is attached to the office of the secretary of state for administrative purposes only, as specified in 2-15-121, except that the provisions of 2-15-121(1)(b), (1)(c), (2)(a), (2)(b), (2)(d), (2)(e), and (3)(a) do not apply. Members of the state ethics commission are entitled to be paid \$50 for each day in which the member is actually and necessarily engaged in the performance of commission duties and are also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the

performance of commission duties.

(3) The state ethics commission shall employ an executive director and may employ an attorney and administrative staff, as necessary. The state ethics commission may delegate authority to the executive director to act in the name of the state ethics commission between meetings.

NEW SECTION. Section 2. State ethics commission functions. (1) The state ethics commission has the functions prescribed in Title 2, chapter 2, in Title 5, chapter 7, and in Title 13, chapters 27, 35, and 37. The state ethics commission may investigate complaints, conduct contested case hearings under Title 2, chapter 4, part 6, develop policies, adopt rules, and enforce laws within the commission's jurisdiction.

(2) The state ethics commission shall review the recommendations of the executive director and may accept, revise, or overturn a recommendation.

(3) The state ethics commission may conduct ethics training for legislators, state officers, state employees, local government officials, and local government employees.

Section 3. Section 2-2-102, MCA, is amended to read:

"2-2-102. Definitions. As used in this part, the following definitions apply:

(1) "Business" includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

(2) "Compensation" means any money or economic benefit conferred on or received by any person in return for services rendered or to be rendered by the person or another.

(3) ~~(a)~~ "Gift of substantial value" means a gift with a value of \$50 \$25 or more ~~for an individual.~~

~~(b) The term does not include:~~

~~—— (i) a gift that is not used and that, within 30 days after receipt, is returned to the donor or delivered to a charitable organization or the state and that is not claimed as a charitable contribution for federal income tax purposes;~~

~~—— (ii) food and beverages consumed on the occasion when participation in a charitable, civic, or community event bears a relationship to the public officer's or public employee's office or employment or when the officer or employee is in attendance in an official capacity;~~

~~—— (iii) educational material directly related to official governmental duties;~~

~~—— (iv) an award publicly presented in recognition of public service; or~~

~~—— (v) educational activity that:~~

~~— (A) does not place or appear to place the recipient under obligation;~~

~~— (B) clearly serves the public good; and~~

~~— (C) is not lavish or extravagant.~~

(4) "Local government" means a county, a consolidated government, an incorporated city or town, a school district, or a special district.

(5) "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, that involves the use of discretionary authority.

(6) "Private interest" means an interest held by an individual that is:

(a) an ownership interest in a business;

(b) a creditor interest in an insolvent business;

(c) an employment or prospective employment for which negotiations have begun;

(d) an ownership interest in real property;

(e) a loan or other debtor interest; or

(f) a directorship or officership in a business.

(7) "Public employee" means:

(a) any temporary or permanent employee of the state;

(b) any temporary or permanent employee of a local government;

(c) a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority; and

(d) a person under contract to the state.

(8) "Public officer" includes any state officer and any elected officer of a local government.

(9) "Special district" means a unit of local government, authorized by law to perform a single function or a limited number of functions. The term includes but is not limited to conservation districts, water districts, weed management districts, irrigation districts, fire districts, community college districts, hospital districts, sewer districts, and transportation districts. The term also includes any district or other entity formed by interlocal agreement.

(10) (a) "State agency" includes:

(i) the state;

(ii) the legislature and its committees;

(iii) all executive departments, boards, commissions, committees, bureaus, and offices;

(iv) the university system; and

(v) all independent commissions and other establishments of the state government.

(b) The term does not include the judicial branch.

(11) "State officer" includes all elected officers and directors of the executive branch of state government as defined in 2-15-102."

Section 4. Section 2-2-104, MCA, is amended to read:

"2-2-104. Rules of conduct for public officers, legislators, and public employees. (1) Proof of commission of any act enumerated in this section is proof that the actor has breached the actor's public duty. A public officer, legislator, or public employee may not:

(a) disclose or use confidential information acquired in the course of official duties in order to further substantially the individual's personal economic interests; or

(b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift:

~~—— (i) that would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties; or~~

~~—— (ii) that the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken.~~

(2) An economic benefit tantamount to a gift includes without limitation a loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of the services. Campaign contributions reported as required by statute are not gifts or economic benefits tantamount to gifts.

(3) (a) Except as provided in subsection (3)(b), a public officer, legislator, or public employee may not receive salaries from two separate public employment positions that overlap for the hours being compensated; unless:

(i) the public officer, legislator, or public employee reimburses the public entity from which the employee is absent for the salary paid for performing the function from which the officer, legislator, or employee is absent; or

(ii) the public officer's, legislator's, or public employee's salary from one employer is reduced by the amount of salary received from the other public employer in order to avoid duplicate compensation for the overlapping hours.

(b) Subsection (3)(a) does not prohibit:

(i) a public officer, legislator, or public employee from receiving income from the use of accrued leave

or compensatory time during the period of overlapping employment; or

(ii) a public school teacher from receiving payment from a college or university for the supervision of student teachers who are enrolled in a teacher education program at the college or university if the supervision is performed concurrently with the school teacher's duties for a public school district.

(c) In order to determine compliance with this subsection (3), a public officer, legislator, or public employee subject to this subsection (3) shall disclose the amounts received from the two separate public employment positions to the ~~commissioner of political practices~~ state ethics commission."

Section 5. Section 2-2-106, MCA, is amended to read:

"2-2-106. Disclosure. (1) (a) Prior to December 15 of each even-numbered year, each state officer or holdover senator shall file with the ~~commissioner of political practices~~ state ethics commission a business disclosure statement on a form provided by the ~~commissioner~~ commission. An individual filing pursuant to subsection (1)(b) or (1)(c) is not required to file under this subsection (1)(a) during the same period.

(b) Each candidate for a statewide or a state office elected from a district shall, within 5 days of the time that the candidate files for office, file a business disclosure statement with the ~~commissioner of political practices~~ state ethics commission on a form provided by the ~~commissioner~~ commission.

(c) An individual appointed to office who would be required to file under subsection (1)(a) or (1)(b) is required to file the business disclosure statement at the earlier of the time of submission of the person's name for confirmation or the assumption of the office.

(2) The statement must provide the following information:

(a) the name, address, and type of business of the individual;

(b) each present or past employing entity from which benefits, including retirement benefits, are currently received by the individual;

(c) each business, firm, corporation, partnership, and other business or professional entity or trust in which the individual holds an interest;

(d) each entity not listed under subsections (2)(a) through (2)(c) in which the individual is an officer or director, regardless of whether or not the entity is organized for profit; and

(e) all real property, other than a personal residence, in which the individual holds an interest. Real property may be described by general description.

(3) An individual may not assume or continue to exercise the powers and duties of the office to which that individual has been elected or appointed until the statement has been filed as provided in subsection (1).

(4) The ~~commissioner of political practices~~ state ethics commission shall make the business disclosure statements available to any individual upon request."

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

"2-2-121. Rules of conduct for public officers and public employees. (1) Proof of commission of any act enumerated in subsection (2) is proof that the actor has breached a public duty.

(2) A public officer or a public employee may not:

(a) subject to subsection (7), use public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's ~~private business purposes~~ economic gain;

(b) engage in a substantial financial transaction for the officer's or employee's ~~private business purposes~~ economic gain with a person whom the officer or employee inspects or supervises in the course of official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from the officer's or employee's agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency;

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom the officer or employee regulates in the course of official duties without first giving written notification to the officer's or employee's supervisor and department director.

(3) (a) Except as provided in subsection (3)(b), a public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds to 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 unless the use is:

(i) authorized by law; or

(ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

(b) As used in this subsection (3), "properly incidental to another activity required or authorized by law" does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for

public office. With respect to ballot issues, properly incidental activities are restricted to:

(i) the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations;

(ii) in the case of a school district, as defined in Title 20, chapter 6, compliance with the requirements of law governing public meetings of the local board of trustees, including the resulting dissemination of information by a board of trustees or a school superintendent or a designated employee in a district with no superintendent in support of or opposition to a bond issue or levy submitted to the electors. Public funds may not be expended for any form of commercial advertising in support of or opposition to a bond issue or levy submitted to the electors.

(c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political views.

(4) A candidate, as defined in 13-1-101(6)(a), may not use or permit the use of state funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains the candidate's name, picture, or voice except in the case of a state or national emergency and then only if the announcement is reasonably necessary to the candidate's official functions.

(5) A public officer or public employee may not participate in a proceeding when an organization, other than an organization or association of local government officials, of which the public officer or public employee is an officer or director is:

(a) involved in a proceeding before the employing agency that is within the scope of the public officer's or public employee's job duties; or

(b) attempting to influence a local, state, or federal proceeding in which the public officer or public employee represents the state or local government.

(6) A public officer or public employee may not engage in any activity, including lobbying, as defined in 5-7-102, on behalf of an organization, other than an organization or association of local government officials, of which the public officer or public employee is a member while performing the public officer's or public employee's job duties. The provisions of this subsection do not prohibit a public officer or public employee from performing charitable fundraising activities if approved by the public officer's or public employee's supervisor or authorized by law.

(7) A listing by a public officer or a public employee in the electronic directory provided for in 30-17-101 of any product created outside of work in a public agency is not in violation of subsection (2)(a) of this section. The public officer or public employee may not make arrangements for the listing in the electronic directory during

work hours.

(8) A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a statute and if the person complies with the disclosure procedures under 2-2-131.

(9) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless the member is also a full-time public employee.

(10) Subsections (2)(b) and (2)(e) do not prevent a member of the governing body of a local government from performing an official act when the member's participation is necessary to obtain a quorum or to otherwise enable the body to act. The member shall disclose the interest creating the appearance of impropriety prior to performing the official act."

Section 7. Section 2-2-131, MCA, is amended to read:

"2-2-131. Disclosure. A public officer or public employee shall, prior to acting in a manner that may impinge on public duty, including the award of a permit, contract, or license, disclose the nature of the private interest that creates the conflict. The public officer or public employee shall make the disclosure in writing to the ~~commissioner of political practices~~ state ethics commission, listing the amount of private interest, if any, the purpose and duration of the person's services rendered, if any, and the compensation received for the services or other information that is necessary to describe the interest. If the public officer or public employee then performs the official act involved, the officer or employee shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act."

Section 8. 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 or public entity alleging a violation of this part by a state officer, legislator, or state employee may file a complaint with the ~~commissioner of political practices~~ state ethics commission. The ~~commissioner~~ state ethics commission does not have jurisdiction for a complaint concerning a legislator if a legislative act is involved in the complaint. The ~~commissioner~~ state ethics commission 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~~ state ethics commission pursuant to 2-2-144(6). The ~~commissioner~~ state ethics commission 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 ~~commissioner~~ state ethics commission 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~~ state ethics commission 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~~ state ethics commission determines that no additional factual development is necessary, the ~~commissioner~~ state ethics commission may issue a summary decision without holding ~~an informal~~ a contested case hearing on the complaint.

(c) Except as provided in subsection (1)(b), if the ~~commissioner~~ state ethics commission determines that the complaint states a potential violation of this part, the ~~commissioner~~ state ethics commission 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 the ~~commissioner~~ state ethics commission determines that a violation of this part has occurred, the ~~commissioner~~ state ethics commission may impose an administrative penalty of not less than ~~\$50~~ \$250 or more than \$1,000, and if the violation was committed by a state employee, the ~~commissioner~~ state ethics commission may also recommend that the employing state agency discipline the employee. The employing ~~entity~~ agency of a state employee may take disciplinary action against an employee for a violation of this part; regardless of whether the ~~commissioner~~ state ethics commission makes a recommendation for discipline. The ~~commissioner~~ state ethics commission may assess the costs of the proceeding against the person bringing the charges if the ~~commissioner~~ state ethics commission determines that a violation did not occur or against the officer or employee if the ~~commissioner~~ state ethics commission determines that a violation did occur.

(3) A party may seek judicial review of the ~~commissioner's~~ state ethics commission'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~~ state ethics commission in connection with an investigation or complaint are confidential documents and are not open for public inspection. 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~~ state ethics commission until the ~~commissioner~~ state ethics commission 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~~ state ethics commission, the complaint and any related documents must be open for public inspection. The ~~commissioner's~~ state ethics commission's decision issued after a hearing is a public record open to inspection.

(5) When a complaint is filed, the ~~commissioner~~ state ethics commission 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~~ state ethics commission may adopt rules to carry out the responsibilities and duties assigned by this part."

Section 9. 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) 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~~ \$250 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~~ \$250 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~~ state ethics commission and the complaint must then be processed by the ~~commissioner~~ pursuant to 2-2-136.

(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~~ state ethics commission pursuant to 2-2-136."

Section 10. Section 5-7-102, MCA, is amended to read:

"5-7-102. Definitions. The following definitions apply in this chapter:

(1) "Appointed state official" means an individual who is appointed:

(a) to public office in state government by the governor or the chief justice of the Montana supreme court and who is subject to confirmation by the Montana senate;

(b) by the board of regents of higher education to serve either as the commissioner of higher education or as the chief executive officer of a campus of the Montana university system; or

(c) by the board of trustees of a community college to serve as president.

(2) "Business" means:

(a) a holding or interest whose fair market value is greater than \$1,000 in a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, self-employed person, holding company, joint-stock company, receivership, trust, or other entity or property held in anticipation of profit, but does not include nonprofit organizations; and

(b) present or past employment from which benefits, including retirement allowances, are received.

~~(3) "Commissioner" means the commissioner of political practices.~~

~~(4)~~⁽³⁾ "Docket" means the register of lobbyists and principals maintained by the ~~commissioner~~ state ethics commission pursuant to 5-7-201.

~~(5)~~⁽⁴⁾ "Elected federal official" means a person elected to a federal office, including but not limited to a member of the United States senate or house of representatives. The term includes an individual appointed to fill the unexpired term of an elected federal official and an individual who has been elected to a federal office but who has not yet been sworn in.

~~(6)~~⁽⁵⁾ "Elected local official" means an elected officer of a county, a consolidated government, an

incorporated city or town, a school district, or a special district. The term includes an individual appointed to fill the unexpired term of an elected local official and an individual who has been elected to a local office but who has not yet been sworn in.

~~(7)(6)~~ (a) "Elected state official" means an individual holding a state office filled by a statewide vote of all the electors of Montana or a state district office, including but not limited to public service commissioners and district court judges ~~but not including legislators for the purposes of this chapter~~. The term includes an individual appointed to fill the unexpired term of an elected state official and an individual who has been elected to a statewide office but who has not yet been sworn in.

(b) The term does not include a legislator.

~~(8)(7)~~ "Elected tribal official" means an elected member of a tribal council or other elected office filled by a vote of tribal members. The term includes an individual appointed to fill the unexpired term of an elected tribal official and an individual who has been elected to a tribal office but who has not yet been sworn in.

(8) "Executive director" means the executive director of the state ethics commission.

(9) "Individual" means a human being.

(10) "Legislator" means an individual holding public office as a representative or a senator in the Montana legislature. The term includes an individual who has been elected to the legislature but who has not yet been sworn in.

(11) (a) "Lobbying" means:

(i) the practice of promoting or opposing the introduction or enactment of legislation before the legislature or the members of the legislature; and

(ii) the practice of promoting or opposing official action by any public official.

(b) The term does not include actions described in subsections (11)(a)(i) and (11)(a)(ii) when performed by a legislator, a public official, an elected local official, an elected federal official, or an elected tribal official while acting in an official governmental capacity.

(12) (a) "Lobbyist" means a person who engages in the practice of lobbying.

(b) Lobbyist does not include:

(i) an individual acting solely on the individual's own behalf;

(ii) an individual working for the same principal as a licensed lobbyist if the individual does not have personal contact involving lobbying with a public official on behalf of the lobbyist's principal; or

(iii) an individual who receives payments from one or more persons that total less than the amount specified under 5-7-112 in a calendar year.

(c) Nothing in this chapter deprives an individual who is not a lobbyist of the constitutional right to communicate with public officials.

(13) (a) "Payment" means distribution, transfer, loan, advance, deposit, gift, or other rendering made or to be made of money, property, or anything of value:

- (i) to a lobbyist to influence legislation or official action by an elected local official or a public official;
- (ii) directly or indirectly to a lobbyist by a principal, such as salary, fee, compensation, or reimbursement for lobbying expenses; or
- (iii) in support of or for assistance to a lobbyist or a lobbying activity, including but not limited to the direct payment of expenses incurred at the request or suggestion of the lobbyist.

(b) The term does not include payments or reimbursements for:

- (i) personal and necessary living expenses; or
- (ii) travel expenses, unless a principal is otherwise required to report expenses pursuant to 5-7-208.

(14) "Person" means an individual, corporation, association, firm, partnership, state or local government or subdivision of state or local government, or other organization or group of persons.

(15) "Principal" means a person who employs a lobbyist or a person required to report pursuant to 5-7-208.

(16) "Public official" means an elected state official or an appointed state official acting in an official capacity for state government. The term does not include those acting in a judicial or quasi-judicial capacity or performing ministerial acts.

(17) "State ethics commission" means the commission established in [section 1].

~~(17)~~(18) "Unprofessional conduct" means:

- (a) violating any of the provisions of this chapter;
- (b) instigating action by a public official for the purpose of obtaining employment;
- (c) attempting to influence the action of a public official on a measure pending or to be proposed by:
 - (i) promising financial support; or
 - (ii) making public any unsubstantiated charges of improper conduct on the part of a lobbyist, a principal, or a legislator; or
- (d) attempting to knowingly deceive a public official with regard to the pertinent facts of an official matter or attempting to knowingly misrepresent pertinent facts of an official matter to a public official."

Section 11. Section 5-7-103, MCA, is amended to read:

"5-7-103. Licenses -- fees -- eligibility -- waiver. (1) Any adult of good moral character who is otherwise qualified under this chapter may be licensed as a lobbyist. The ~~commissioner~~ state ethics commission shall provide a license application form. The application form may be obtained from and must be filed in the office of the ~~commissioner~~ state ethics commission. Upon approval of the application and receipt of the license fee by the ~~commissioner~~ state ethics commission, a license must be issued that entitles the licensee to practice lobbying on behalf of one or more enumerated principals. The license fee is \$150 for each lobbyist except as provided in subsection (5) or unless the fee is waived for hardship reasons under this subsection. Each license expires on December 31 of each even-numbered year or may be terminated at the request of the lobbyist. A lobbyist who believes that payment of the license fee may constitute a hardship may apply to the ~~commissioner~~ state ethics commission for a waiver of the fee required by this section. The ~~commissioner~~ state ethics commission may waive all or a portion of the license fee upon proof by the lobbyist that payment of the fee constitutes a hardship.

(2) (a) Except as provided in subsection (2)(b), an application may not be disapproved without affording the applicant a hearing before the state ethics commission. The hearing must be held and the decision entered within 10 business days of the date of the filing of the application, excluding the date on which the application is filed.

(b) An application may not be approved if a principal has failed to file reports required under 5-7-208.

(3) The fines collected under this chapter must be deposited in the state treasury.

(4) The ~~commissioner~~ state ethics commission shall deposit the license fee provided for in subsection (1) as follows:

(a) \$50 in the general fund; and

(b) \$100 in the state special revenue account provided for in 5-11-1112.

(5) A lobbyist who receives payments from one or more principals that total less than the amount specified under 5-7-112 in a calendar year is not required to pay the license fee or file an application form as provided for in subsection (1).

(6) The ~~commissioner~~ state ethics commission may adopt rules to implement the waiver provisions of subsections (1) and (5)."

Section 12. Section 5-7-108, MCA, is amended to read:

"5-7-108. Inspection of applications and reports -- order of noncompliance -- notification. (1) Each application and report filed with the ~~commissioner~~ state ethics commission must be inspected within 10 days after it is filed. If a person has not satisfied the provisions of this chapter, the ~~commissioner~~ executive director shall

immediately notify the person of the noncompliance.

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

(a) it is determined that an application or report filed with the ~~commissioner~~ state ethics commission does not conform to the requirements of this chapter; or

(b) a person has failed to file an application or report required by law.

(3) The person notified of noncompliance shall submit the necessary information within 5 days after receiving the notice of noncompliance. If the person notified of noncompliance fails to submit the required information within 5 days, the ~~commissioner~~ state ethics commission may initiate a civil action pursuant to the procedures contained in 5-7-305."

Section 13. Section 5-7-111, MCA, is amended to read:

"5-7-111. ~~Commissioner to make rules~~ Rules. (1) The ~~commissioner~~ state ethics commission shall promulgate and publish rules necessary to carry out the provisions of this chapter in conformance with the Montana Administrative Procedure Act and, in particular, shall provide rules necessary to allocate salary, expenses, and any other payments between lobbying activities and other activities not connected with lobbying for any person whose activities are not solely limited to lobbying.

(2) ~~Such~~ The rules ~~shall~~ must be designed to effect and promote the purposes of this chapter, express or implied. ~~Such~~ The rules ~~shall~~ must be as simple and easily complied with as possible."

Section 14. Section 5-7-112, MCA, is amended to read:

"5-7-112. Payment threshold -- inflation adjustment. For calendar year 2004, the payment threshold referred to in 5-7-102, 5-7-103, and 5-7-208 is \$2,150. The ~~commissioner~~ state ethics commission shall adjust the threshold amount following a general election by multiplying the threshold amount valid for the year in which the general election was held by an inflation factor, adopted by the ~~commissioner~~ state ethics commission by rule. The rule must be written to reflect the annual average change in the consumer price index from the prior year to the year in which the general election is held. The resulting figure must be rounded up or down to the nearest \$50 increment. The ~~commissioner~~ state ethics commission shall adopt the adjusted amount by rule."

Section 15. Section 5-7-201, MCA, is amended to read:

"5-7-201. Docket -- contents. The ~~commissioner~~ state ethics commission shall make available to the public the information required by this chapter, including but not limited to the name and business address of each

lobbyist, the name and business address of ~~his~~ the lobbyist's principal, and the subject or subjects to which the employment relates or a statement that the employment relates to all matters in which the principal has an interest. The docket entry for each principal must also indicate the date of receipt of the principal's lobbying reports as required by 5-7-208."

Section 16. Section 5-7-202, MCA, is amended to read:

"5-7-202. Docket -- public record. ~~Such~~ The docket shall be described in 5-7-201 is a public record and must be open to the inspection of any individual upon demand at any time during the regular business hours of the office of the ~~commissioner~~ state ethics commission."

Section 17. Section 5-7-207, MCA, is amended to read:

"5-7-207. Report to legislature. Beginning with the first Tuesday following the beginning of any regular or special session of the legislature and on the first Tuesday of every month thereafter during which the legislature is in session, the ~~commissioner~~ state ethics commission shall make available from the ~~commissioner's~~ state ethics commission's records a report to each member of each house of the legislature containing the names of lobbyists registered under this chapter, not previously reported, the names of the principals whom they represent as lobbyists, and the subjects of legislation in which each principal is interested."

Section 18. Section 5-7-208, MCA, is amended to read:

"5-7-208. Principals to file report. (1) A principal subject to this chapter shall file with the ~~commissioner~~ state ethics commission a report of payments made for the purpose of lobbying. A principal is subject to the reporting requirements of this section only if the principal makes total payments for the purpose of lobbying that exceed the amount specified under 5-7-112 during a calendar year.

(2) If payments are made solely to influence legislative action, a report must be made:

(a) by February 15th of any year the legislature is in session and must include all payments made in that calendar year prior to February 1;

(b) by the 15th day of the calendar month following a calendar month in which the principal spent \$5,000 or more and must include all payments made during the prior calendar month; and

(c) no later than 30 days following adjournment of a legislative session and must include all payments made during the session, except as previously reported.

(3) If payments are made to influence any other official action by a public official or made to influence

other action and legislative action, a report must be made:

(a) by February 15th of the calendar year following the payments and must include all payments made during the prior calendar year; and

(b) by the 15th day of the calendar month following a calendar month in which the principal spent \$5,000 or more and must include all payments made during the prior calendar month.

(4) If payments are not made during the reporting periods provided in subsections (2)(a), (2)(c), and (3)(a), the principal shall file a report stating that fact.

(5) Each report filed under this section must:

(a) list all payments for lobbying in each of the following categories:

(i) printing;

(ii) advertising, including production costs;

(iii) postage;

(iv) travel expenses;

(v) salaries and fees, including allowances, rewards, and contingency fees;

(vi) entertainment, including all foods and refreshments;

(vii) telephone and telegraph; and

(viii) other office expenses;

(b) itemize, identifying the payee and the beneficiary:

(i) each separate payment conferring \$25 or more benefit to any public official when the payment was made for the purpose of lobbying; and

(ii) each separate payment conferring \$100 or more benefit to more than one public official, regardless of individual benefit when the payment was made for the purpose of lobbying, except that in regard to a dinner or other function to which all senators or all representatives have been invited, the beneficiary may be listed as all members of that group without listing separately each person who attended;

(c) list each contribution and membership fee that amounts to \$250 or more when aggregated over the period of 1 calendar year paid to the principal for the purpose of lobbying, with the full address of each payer and the issue area, if any, for which the payment was earmarked;

(d) list each official action on which the principal or the principal's agents exerted a major effort to support, oppose, or modify, together with a statement of the principal's position for or against the action; and

(e) be kept by the ~~commissioner~~ state ethics commission for a period of 10 years."

Section 19. Section 5-7-212, MCA, is amended to read:

"5-7-212. Audit of lobbying reports. (1) The ~~commissioner~~ state ethics commission may audit the reports filed under 5-7-208 and shall investigate any irregularities and report any apparent violations of this chapter to the attorneys having authority to prosecute. The lobbyist is required to provide and the principal is required to obtain and keep for a period of 3 years from the date of filing all records supporting the reports filed under 5-7-208.

(2) All records under subsection (1) must be open to inspection on request of the ~~commissioner~~ state ethics commission or an attorney having authority to prosecute violations of this chapter. The ~~commissioner~~ state ethics commission and the attorneys are given the power to:

- (a) subpoena and compel attendance;
- (b) issue enforceable civil investigative demands;
- (c) take evidence; and
- (d) require the production of any books, correspondence, memoranda, bank account statements, or other records which are relevant or material for the purpose of conducting any investigation pursuant to the provisions of this chapter."

Section 20. Section 5-7-305, MCA, is amended to read:

"5-7-305. Penalties and enforcement. (1) A person who violates any of the provisions of this chapter is subject to civil penalties of not less than \$250 and not more than \$7,500 according to the discretion of the district court, as court of original jurisdiction. A lobbyist who violates any of the provisions of this chapter must have the lobbyist's license suspended or revoked according to the discretion of the court. Any public official holding elective office adjudged in violation of the provisions of this chapter is additionally subject to recall under the Montana Recall Act, Title 2, chapter 16, part 6, and the violation constitutes an additional basis for recall to those mentioned in 2-16-603(3).

(2) The attorney general, the ~~commissioner~~ state ethics commission, or the county attorney of the county in which the violation takes place may bring a civil action in the name of the state for any appropriate civil remedy.

(3) If a civil penalty action is undertaken by the attorney general or the ~~commissioner~~ state ethics commission, all costs associated with the prosecution must be paid by the state of Montana.

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

this chapter if:

(i) the attorney general, the ~~commissioner~~ state ethics commission, or the appropriate county attorney has failed to commence an action within 90 days after notice; and

(ii) the attorney general, the ~~commissioner~~ state ethics commission, or the county attorney fails to commence an action within 10 days after receiving a written notice that a citizen's action will be brought if the attorney general, the ~~commissioner~~ state ethics commission, or the county attorney does not bring an action.

(b) Each notification tolls the applicable statute of limitations until the expiration of the waiting period.

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

(5) A civil action may not be brought under this section more than 3 years after the occurrence of the facts that give rise to the action.

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

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

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

Section 21. Section 5-7-306, MCA, is amended to read:

"5-7-306. Civil penalties for delays in filing -- option for hearing -- suspension of penalty. (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

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

(3) A person against whom a civil penalty is imposed pursuant to subsection (1) may request, within 10 days of receiving a notice of imposition of a civil penalty, a hearing before the ~~commissioner~~ state ethics commission. Upon receipt of a timely request, the ~~commissioner~~ state ethics commission shall hold an informal contested case hearing as provided in Title 2, chapter 4, part 6. Upon the filing of a timely request for a hearing,

the imposition of the daily civil penalty provided for in this section must be suspended until the ~~commissioner~~ state ethics commission issues a decision. At the hearing, the ~~commissioner~~ state ethics commission shall consider any factors or circumstances in mitigation and may reduce or waive the civil penalty.

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

Section 22. Section 7-4-2611, MCA, is amended to read:

"7-4-2611. Role and duties of county clerk and election administrator. (1) The county clerk of a county is also clerk of the county commissioners and ex officio recorder. A duty imposed by law upon the officer, whether as county clerk, clerk of the county commissioners, or recorder, must be performed by the county clerk, and any official act performed or certified by the county clerk is as valid and effectual as if performed and certified by the clerk of the county commissioners or the recorder.

(2) The county clerk shall:

(a) take charge of and safely keep or dispose of according to law all books, papers, maps, and records that may be filed or deposited in the county clerk's office;

(b) record all the proceedings of the board;

(c) make full entries of all its resolutions and decisions on all questions concerning the raising of money for and the allowance of accounts against the county;

(d) record the vote of each member on a question upon which there is a division or at the request of any member present;

(e) sign all orders made and warrants issued by order of the board for the payment of money and certify the orders and warrants to the county treasurer;

(f) record the reports of the county treasurer of the receipts and disbursements of the county;

(g) preserve and file all accounts acted upon by the board;

(h) preserve and file all petitions and applications for franchises and record the action of the board on the petitions and applications;

(i) record all orders levying taxes;

(j) designate upon each account allowed by the board the amount allowed and deliver to any person who may demand it a certified copy of any record or any account on file in the county clerk's office;

(k) when a new township is organized or the boundaries of a township are altered, immediately make out and transmit to the secretary of state a certified statement of the names and boundaries of the township organized or altered;

(l) keep other records and books and perform other duties that are prescribed by law or by rule or order of the board.

(3) An election administrator shall file, code, and cross-index all reports and statements filed as prescribed by the ~~commissioner of political practices~~ state ethics commission provided for in [section 1].

(4) An election administrator shall make statements and other information filed under the provisions of Title 13, chapters 35, 36, and 37, available for public inspection and copying during the office hours determined by the governing body by resolution after a public hearing and make copying facilities available free of charge or at a charge not to exceed actual cost."

Section 23. Section 13-27-111, MCA, is amended to read:

"13-27-111. Definitions. As used in 13-27-112, 13-27-113, and this section, unless otherwise indicated by the context, the following definitions apply:

~~(1) "Commissioner" means the commissioner of political practices provided for in 13-37-102.~~

~~(2)~~(1) "Paid signature gatherer" means a signature gatherer who is compensated in money for the collection of signatures.

~~(3)~~(2) "Person" has the meaning provided in 13-1-101, but does not include a candidate and includes a political committee.

~~(4)~~(3) "Signature gatherer" means an individual who collects signatures on a petition for the purpose of an initiative, a referendum, or the calling of a constitutional convention.

(4) "State ethics commission" means the commission created pursuant to [section 1]."

Section 24. Section 13-27-112, MCA, is amended to read:

"13-27-112. Required reports -- time and manner of reporting -- exceptions -- penalty. (1) Except as provided in this section, a person who employs a paid signature gatherer shall file with the ~~commissioner~~ state ethics commission reports containing those matters required by Title 13, chapter 37, part 2, for a political committee organized to support or oppose a ballot issue or for an independent committee that receives contributions and makes expenditures in connection with a ballot issue, as applicable. If a person who employs a paid signature gatherer is required by Title 13, chapter 37, part 2, to file a report pursuant to those provisions, the person need not file a duplicate report pursuant to this section, but shall report the matter required by subsection (2) as part of that report. As used in this section, "a person who employs a paid signature gatherer" means a political party, political committee, or other person seeking to place a ballot issue before the electors

and does not mean an individual who is part of the same signature gathering company, partnership, or other business organization that directly hires, supervises, and pays an individual who is a signature gatherer.

(2) The reports required by subsection (1) must include the amount paid to a paid signature gatherer.

(3) Reports filed pursuant to this section must be filed at the same time, in the same manner, including the certification required by 13-37-231, and upon the same forms as required for reports filed pursuant to Title 13, chapter 37, part 2, except as the rules of the ~~commissioner~~ state ethics commission may otherwise provide.

(4) A person who knowingly violates subsection (1) is guilty of a misdemeanor and upon conviction shall be punished as provided by law."

Section 25. Section 13-27-113, MCA, is amended to read:

"13-27-113. Powers and duties of ~~commissioner~~ state ethics commission. (1) The ~~commissioner~~ state ethics commission has the same powers and duties regarding the regulation of signature gatherers, as provided in 13-27-112 and this section, as the ~~commissioner~~ state ethics commission has regarding the control of campaign practices as provided in Title 13, chapter 37, including the investigation of alleged violations of 13-27-112 and the issuance of orders of noncompliance for and prosecution of violations of 13-27-112.

(2) The ~~commissioner~~ state ethics commission may adopt rules to implement 13-27-112."

Section 26. Section 13-35-225, MCA, is amended to read:

"13-35-225. Election materials not to be anonymous -- statement of accuracy. (1) All 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, internet website, or other form of general political advertising must clearly and conspicuously include the attribution "paid for by" followed by the name and address of the person who made or financed the expenditure for the communication. When a candidate or a candidate's campaign finances the expenditure, the attribution must be the name and the address of the candidate or the candidate's campaign. In the case of a political committee, the attribution must be the name of the committee, the name of the committee treasurer, and the address of the committee or the committee treasurer.

(2) 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.

(3) (a) Printed election material described in subsection (1) that includes information about another candidate's voting record must include:

- (i) a reference to the particular vote or votes upon which the information is based;
- (ii) a disclosure of contrasting votes known to have been made by the candidate on the same issue if closely related in time; and
- (iii) a statement, signed as provided in subsection (3)(b), that to the best of the signer's knowledge, the statements made about the other candidate's voting record are accurate and true.

(b) The statement required under subsection (3)(a) must be signed:

- (i) by the candidate if the election material was prepared for the candidate or the candidate's political committee and includes information about another candidate's voting record; or
- (ii) by the person financing the communication or the person's legal agent if the election material was not prepared for a candidate or a candidate's political committee.

(4) If a document or other article of advertising is too small for the requirements of subsections (1) through (3) to be conveniently included, the candidate responsible for the material or the person financing the communication shall file a copy of the article with the ~~commissioner of political practices~~ state ethics commission, together with the required information or statement, at the time of its public distribution.

(5) If information required in subsections (1) through (3) is omitted or not printed, upon discovery of or notification about the omission, the candidate responsible for the material or the person financing the communication shall:

- (a) file notification of the omission with the ~~commissioner of political practices~~ state ethics commission within 5 days of the discovery or notification;
- (b) bring the material into compliance with subsections (1) through (3); and
- (c) withdraw any noncompliant communication from circulation as soon as reasonably possible."

Section 27. 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 authorized by 13-37-128, brought by the ~~commissioner of political practices~~ state ethics commission or a county attorney pursuant to 13-37-124 and 13-37-125."

Section 28. Section 13-35-302, MCA, is amended to read:

"13-35-302. Candidates to be given opportunity to subscribe to campaign practices code. (1) The ~~commissioner of political practices~~ state ethics commission shall prepare a form that sets forth the code of fair campaign practices provided for in 13-35-301 and a place for a candidate to sign the form and to indicate that the candidate endorses, subscribes to, and pledges to abide by the code.

(2) The ~~commissioner~~ state ethics commission shall send a copy of the form to each candidate required to file reports or other information with the ~~commissioner~~ state ethics commission. Signing the form is voluntary, and a failure or refusal to sign is not a violation of the election laws. A form must be sent for each election as soon as feasible. The signed form must be returned to the ~~commissioner~~ state ethics commission.

(3) Any candidate not required to file with the ~~commissioner~~ state ethics commission but wishing to subscribe to the code may obtain the form from the ~~commissioner~~ state ethics commission and may sign the form and deliver it to the ~~commissioner~~ state ethics commission."

Section 29. Section 13-37-101, MCA, is amended to read:

"13-37-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the

following definitions apply:

~~(1) "Commissioner" means the commissioner of political practices created by 13-37-102.~~

(1) "Executive director" has the meaning provided in 5-7-102.

(2) "Public office" has the meaning provided in 13-1-101.

(3) "Recusal" means disqualification from a matter by reason of prejudice or conflict of interest.

~~(4) "Relative" means a family member who is within the second degree of consanguinity or affinity to the commissioner.~~

(4) "State ethics commission" means the commission provided for in [section 1]."

Section 30. Section 13-37-111, MCA, is amended to read:

"13-37-111. Investigative powers and duties -- recusal. (1) The ~~commissioner~~ state ethics commission 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 ~~commissioner~~ executive director, on behalf of the state ethics commission, or an individual hired by the state ethics commission 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~~ state ethics commission 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~~ a member of the state ethics commission determines that considering a matter would give rise to the appearance of impropriety or a conflict of interest, the ~~commissioner~~ member 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 31. Section 13-37-112, MCA, is amended to read:

"13-37-112. Personnel and budget. (1) The ~~commissioner~~ state ethics commission shall select an appropriate staff to enforce the provisions of chapter 35 of this title and this chapter, and may hire and fire all personnel under the ~~commissioner's~~ commission's supervision.

(2) The ~~commissioner~~ executive director is responsible for preparing, administering, and allocating the budget for the office."

Section 32. Section 13-37-113, MCA, is amended to read:

"13-37-113. Hiring of attorneys -- prosecutions. The ~~commissioner~~ state ethics commission 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~~ state ethics commission and the provisions of 13-37-124 and 13-37-125, 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 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 33. Section 13-37-114, MCA, is amended to read:

"13-37-114. Rules. The ~~commissioner~~ state ethics commission shall adopt rules to carry out the provisions of chapter 35 of this title and this chapter in conformance with the Montana Administrative Procedure Act."

Section 34. Section 13-37-115, MCA, is amended to read:

"13-37-115. Orders of noncompliance. The ~~commissioner~~ state ethics commission may issue orders of noncompliance as prescribed by 13-37-121."

Section 35. Section 13-37-116, MCA, is amended to read:

"13-37-116. Exercise of powers. The ~~commissioner~~ state ethics commission may exercise all of the powers conferred upon ~~him~~ it by law in any jurisdiction or political subdivision of the state."

Section 36. Section 13-37-117, MCA, is amended to read:

"13-37-117. ~~Commissioner to provide~~ Provision of forms, manuals, and election laws. (1) The ~~commissioner~~ state ethics commission shall prescribe forms for reports and other information required to be filed pursuant to chapter 35 and this chapter, and the executive director shall provide forms and appropriate information to persons required to file reports and other information.

(2) The ~~commissioner~~ executive director shall prepare and publish a manual prescribing a uniform system for accounts for use by persons required to file reports pursuant to chapter 35 or this chapter.

(3) The ~~commissioner~~ executive director shall provide copies of the election laws relating to penalties, campaign practices, campaign finances, and contested elections to candidates and to any other persons required

to file reports or other information pursuant to chapter 35 or this chapter.

(4) The ~~commissioner~~ executive director shall provide copies of forms, manuals, and election laws referred to in this section electronically. Upon request, the ~~commissioner~~ executive director shall provide paper copies."

Section 37. 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~~ state ethics commission 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 a person has not satisfied the provisions of this chapter, the ~~commissioner~~ state ethics commission shall immediately notify the person of the noncompliance. Notification by the ~~commissioner~~ state ethics commission may be accomplished by written or electronic communication or by telephone. If the person fails to comply after the notification, the ~~commissioner~~ state ethics commission shall issue an order of noncompliance as provided in this section.

(2) 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~~ state ethics commission 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~~ state ethics commission may 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~~ state ethics commission shall 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~~ state ethics commission 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 38. Section 13-37-124, MCA, is amended to read:

"13-37-124. Consultation and cooperation with county attorney. (1) Whenever the ~~commissioner~~ state ethics commission 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~~ state ethics commission 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~~ state ethics commission may 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 subsection (1), waive the right to prosecute, and the waiver authorizes the ~~commissioner~~ state ethics commission 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, the ~~commissioner~~ state ethics commission 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~~ state ethics commission, 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~~ state ethics commission, except those paid to or imposed by a justice's court, must be deposited in the state general fund."

Section 39. Section 13-37-126, MCA, is amended to read:

"13-37-126. Names not to appear on ballot. (1) The name of a candidate may not appear 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.

(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~~ state ethics commission 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 appear on the official ballot. The ~~commissioner~~ state ethics commission 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 40. 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 only by the public official responsible for issuing a certificate or commission of election.

(2) In carrying out the mandate of this section, the ~~commissioner~~ state ethics commission shall, 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."

Section 41. 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~~ state ethics commission or a county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 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~~ state ethics commission or a county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for an amount up to \$500 or three times the amount of the unlawful contribution or expenditure, whichever is greater."

Section 42. 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~~ state ethics commission in a court other than a justice's court, the entire amount recovered ~~shall~~ must be paid to the state general fund of the state."

Section 43. 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~~ state ethics commission or county attorney pursuant to 13-37-124 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."

Section 44. Section 13-37-226, MCA, is amended to read:

"13-37-226. Time for filing reports. (1) Candidates for a state office filled by a statewide vote of all the electors of Montana and political committees that are organized to support or oppose a particular statewide candidate shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that the candidate expects to be on the ballot;

(b) on the 10th day of March and September in each year that an election is to be held and on the 15th and 5th days preceding the date on which an election is held and within 24 hours after receiving a contribution

of \$200 or more if received between the 10th day before the election and the day of the election;

(c) not more than 20 days after the date of the election; and

(d) on the 10th day of March and September of each year following an election until the candidate or political committee files a closing report as specified in 13-37-228(3).

(2) Political committees organized to support or oppose a particular statewide ballot issue shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which the text of the proposed measure is submitted for review and approval pursuant to 13-27-202 during the year or years prior to the election year that an issue is or is expected to be on the ballot;

(b) on the 10th day of March and on the 10th day of each subsequent month through September;

(c) on the 15th and 5th days preceding the date on which an election is held;

(d) within 24 hours after receiving a contribution of \$500 or more if received between the 10th day before the election and the day of the election;

(e) within 20 days after the election; and

(f) on the 10th day of March and September of each year following an election until the political committee files a closing report as specified in 13-37-228(3).

(3) Candidates for a state district office, including but not limited to candidates for the legislature, the public service commission, or a district court judge, and political committees that are specifically organized to support or oppose a particular state district candidate or issue shall file reports:

(a) on the 12th day preceding the date on which an election is held and within 48 hours after receiving a contribution of \$100 or more if received between the 17th day before the election and the day of the election. The report under this subsection (3)(a) may be made by mail or by electronic communication to the clerk and recorder and the ~~commissioner of political practices~~ state ethics commission.

(b) not more than 20 days after the date of the election; and

(c) whenever a candidate or political committee files a closing report as specified in 13-37-228(3).

(4) Candidates for any other public office and political committees that are specifically organized to support or oppose a particular local issue shall file the reports specified in subsection (3) only if the total amount of contributions received or the total amount of funds expended for all elections in a campaign, excluding the filing fee paid by the candidate, exceeds \$500, except as provided in 13-37-206.

(5) For the purposes of this subsection, a committee that is not specifically organized to support or oppose a particular candidate or ballot issue and that receives contributions and makes expenditures in

conjunction with an election is an independent committee. For the purpose of reporting, a political party committee is an independent committee. An independent committee shall file:

(a) a report on the 12th day preceding the date of an election in which it participates by making an expenditure;

(b) a report not more than 20 days after the date of the election in which it participates by making an expenditure; and

(c) a report on a date to be prescribed by the ~~commissioner~~ state ethics commission for a closing report at the close of each calendar year.

(6) The ~~commissioner~~ state ethics commission may promulgate rules regarding the extent to which organizations that are incidental political committees shall report their politically related activities in accordance with this chapter.

(7) All reports required by this section must be complete as of the fifth day before the date of filing as specified in 13-37-228(2) and this section."

Section 45. Section 13-37-227, MCA, is amended to read:

"13-37-227. Comprehensive report when several candidates or issues involved. The ~~commissioner~~ state ethics commission shall adopt rules that will permit political committees, including political parties, to file copies of a single comprehensive report when they support or oppose more than one candidate or issue. The ~~commissioner~~ state ethics commission shall adopt rules under which committees filing periodic reports with the federal election commission and committees headquartered outside the state of Montana shall report in accordance with this title."

Section 46. Section 13-37-229, MCA, is amended to read:

"13-37-229. Disclosure of contributions received. Each report required by this chapter shall disclose the following information:

(1) the amount of cash on hand at the beginning of the reporting period;

(2) the full name, mailing address, occupation, and employer, if any, of each person who has made aggregate contributions, other than loans, of \$35 or more to a candidate or political committee, including the purchase of tickets and other items for events, such as dinners, luncheons, rallies, and similar fundraising events;

(3) for each person identified under subsection (2), the aggregate amount of contributions made by that person within the reporting period and the total amount of contributions made by that person for all reporting

periods;

(4) the total sum of individual contributions made to or for a political committee or candidate and not reported under subsections (2) and (3);

(5) the name and address of each political committee or candidate from which the reporting committee or candidate received any transfer of funds, together with the amount and dates of all transfers;

(6) each loan from any person during the reporting period, together with the full names, mailing addresses, occupations, and employers, if any, of the lender and endorsers, if any, and the date and amount of each loan;

(7) the amount and nature of debts and obligations owed to a political committee or candidate, in the form prescribed by the ~~commissioner~~ state ethics commission;

(8) an itemized account of proceeds that total less than \$35 from a person from mass collections made at fundraising events;

(9) each contribution, rebate, refund, or other receipt not otherwise listed under subsections (2) through (8) during the reporting period;

(10) the total sum of all receipts received by or for the committee or candidate during the reporting period; and

(11) other information that may be required by the ~~commissioner~~ state ethics commission to fully disclose the sources of funds used to support or oppose candidates or issues."

Section 47. Section 13-37-230, MCA, is amended to read:

"13-37-230. Disclosure of expenditures made. Each report required by this chapter shall disclose the following information, except that a candidate ~~shall only be~~ is required to report the information specified in this section only if the transactions involved were undertaken for the purpose of influencing an election:

(1) the full name and mailing address (occupation and the principal place of business, if any) of each person to whom expenditures have been made by the committee or candidate during the reporting period, including the amount, date, and purpose of each expenditure and the total amount of expenditures made to each person;

(2) the full name and mailing addresses (occupation and the principal place of business, if any) of each person to whom an expenditure for personal services, salaries, and reimbursed expenses have been made, including the amount, date, and purpose of that expenditure and the total amount of expenditures made to each person;

- (3) the total sum of expenditures made by a political committee or candidate during the reporting period;
- (4) the name and address of each political committee or candidate to which the reporting committee or candidate made any transfer of funds, together with the amount and dates of all transfers;
- (5) the name of any person to whom a loan was made during the reporting period, including the full name and mailing address (occupation and principal place of business, if any) of that person, and the full name and mailing address (occupation and principal place of business, if any) of the endorsers, if any, and the date and amount of each loan;
- (6) the amount and nature of debts and obligations owed by a political committee or candidate in the form prescribed by the ~~commissioner~~ state ethics commission;
- (7) other information that may be required by the ~~commissioner~~ state ethics commission to fully disclose the disposition of funds used to support or oppose candidates or issues."

Section 48. Section 13-37-250, MCA, is amended to read:

"13-37-250. Voluntary spending limits. (1) (a) The following statement may be used in printed matter and in broadcast advertisements and may appear in the voter information pamphlet prepared by the secretary of state: "According to the ~~Office of the Commissioner of Political Practices~~ State Ethics Commission, _____ is in compliance with the voluntary expenditure limits established under Montana law."

(b) The treasurer of each political committee, as defined in 13-1-101, who files a certification on a ballot issue pursuant to 13-37-201 may also file with the ~~commissioner~~ state ethics commission a sworn statement that the committee will not exceed the voluntary expenditure limits of this section. If a sworn statement is made, it must be filed with the ~~commissioner~~ state ethics commission within 30 days of the certification of the political committee.

(c) A political committee that has not filed a sworn statement with the ~~commissioner~~ state ethics commission may not distribute any printed matter or pay for any broadcast claiming to be in compliance with the voluntary expenditure limits of this section.

(d) A political committee may not use evidence of compliance with the voluntary expenditure limits of this section to imply to the public that the committee has received endorsement or approval by the state of Montana.

(2) For the purposes of this section, the expenditures made by a political committee consist of the aggregate total of the following during the calendar year:

- (a) all committee loans or expenditures made by check or cash; and
- (b) the dollar value of all in-kind contributions made or received by the committee.

(3) In order to be identified as a political committee in compliance with the voluntary expenditure limits of this section, the committee's expenditures, as described in subsection (2), may not exceed \$195,000.

(4) A political committee that files with the ~~commissioner~~ state ethics commission a sworn statement to abide by the voluntary expenditure limits of this section but that exceeds those limits shall pay a fine of \$6,500 to the ~~commissioner~~ state ethics commission. This money must be deposited in a separate fund to be used to support the enforcement programs of the ~~office of the commissioner~~ state ethics commission.

(5) After July 1, 2004, all limits on voluntary spending in this section must be multiplied by an inflation factor, which is determined by dividing the consumer price index for June of the year prior to the year in which the general election is held by the consumer price index for June 2003. The resulting figure must be rounded up or down to the nearest \$50 increment."

NEW SECTION. Section 49. Repealer. Sections 2-15-411, 13-37-102, 13-37-103, 13-37-104, 13-37-105, 13-37-106, 13-37-107, and 13-37-108, MCA, are repealed.

NEW SECTION. Section 50. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 2, chapter 15, part 4, and the provisions of Title 2, chapter 15, part 4, apply to [sections 1 and 2].

NEW SECTION. Section 51. Directions to code commissioner. In any legislation enacted by the 60th legislature, the code commissioner shall replace references to the commissioner of political practices with references to the state ethics commission.

NEW SECTION. Section 52. Effective date. [This act] is effective July 1, 2007.

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