

SENATE BILL NO. 253
INTRODUCED BY M. COONEY

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING CERTAIN BROADCAST CAMPAIGN ADVERTISING MATERIAL AND AN AFFIDAVIT ABOUT THE TRUTH OF THE CONTENT TO BE FILED WITH THE COMMISSIONER OF POLITICAL PRACTICES; AUTHORIZING THE COUNTY ATTORNEY TO INVESTIGATE AND PROSECUTE ALLEGED FALSE SWEARING IN REGARD TO CERTAIN CAMPAIGN ADVERTISING MATERIAL THAT IS SWORN TO BE TRUTHFUL AND VERIFIABLE; INCREASING THE POTENTIAL FINE FOR FALSE SWEARING ABOUT THE ADVERTISING CONTENT; AND AMENDING SECTION SECTIONS 13-37-111, 13-37-113, 13-37-124, AND 45-7-202, MCA."

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

NEW SECTION. Section 1. Voluntary filing of broadcast campaign materials -- affidavit -- penalty.

(1) (a) A political committee not organized by or on behalf of a candidate may file with the commissioner of political practices a copy of a campaign script intended for broadcast advertising.

(b) The committee's authorized agent may sign an affidavit swearing that the content of the script is true and verifiable and may file supporting documentation.

(2) (a) Scripts and affidavits must be filed in the manner prescribed by the commissioner of political practices.

(b) The commissioner of political practices shall file the scripts, affidavits, and any documentation in a manner that allows for them to be readily inspected.

(3) (A) ANY PERSON WHO BELIEVES THAT THE CONTENT OF A SCRIPT FILED PURSUANT TO THIS SECTION IS EITHER UNTRUE OR UNVERIFIABLE MAY BRING THE MATTER TO THE ATTENTION OF THE COUNTY ATTORNEY OF LEWIS AND CLARK COUNTY OR THE COUNTY ATTORNEY OF THE COUNTY IN WHICH THE PERSON IS A RESIDENT.

(B) THE COUNTY ATTORNEY MAY INVESTIGATE THE ALLEGED FALSIFICATION OR UNVERIFIABILITY OF THE SCRIPT AND, IF THE COUNTY ATTORNEY DETERMINES THAT SUFFICIENT EVIDENCE EXISTS TO JUSTIFY A CRIMINAL PROSECUTION, SHALL FILE A CAUSE OF ACTION.

(C) AN ALLEGATION OF VIOLATION OF SUBSECTION (1) MAY NOT BE FILED WITH, INVESTIGATED BY, OR PROSECUTED BY THE COMMISSIONER OF POLITICAL PRACTICES.

~~(3)~~(4) A person filing an affidavit under this section is subject to the penalty for false swearing under

45-7-202, except that the fine may not exceed \$5,000.

SECTION 2. SECTION 13-37-111, MCA, IS AMENDED TO READ:

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

(2) The commissioner may:

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

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

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

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

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

(b) The deputy:

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

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

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

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

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

SECTION 3. SECTION 13-37-113, MCA, IS AMENDED TO READ:

"13-37-113. Hiring of attorneys -- prosecutions. The commissioner may hire or retain attorneys who are properly licensed to practice before the supreme court of the state of Montana to prosecute violations of chapter 35 of this title or this chapter. Any attorney retained or hired shall exercise the powers of a special attorney general, and the attorney may prosecute, subject to the control and supervision of the commissioner and the provisions of [section 1], 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 4. SECTION 13-37-124, MCA, IS AMENDED TO READ:

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

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

Section 5. Section 45-7-202, MCA, is amended to read:

"45-7-202. False swearing. (1) A person commits the offense of false swearing if ~~he~~ the person knowingly makes a false statement under oath or equivalent affirmation or swears or affirms the truth of ~~such~~ a statement previously made when ~~he~~ the person does not believe the statement to be true and:

(a) the falsification occurs in an official proceeding;

(b) the falsification is purposely made to mislead a public servant in performing ~~his~~ an official function;

or

(c) the statement is one ~~which~~ that is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.

(2) Subsections (4) through (7) of 45-7-201 apply to this section.

(3) ~~A~~ Except as provided in [section 1], a person convicted of false swearing shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for ~~any~~ a term not to exceed 6 months, or both."

NEW SECTION. **Section 6. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 13, chapter 35, part 2, and the provisions of Title 13, chapter 35, part 2, apply to [section 1].

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