

1 SENATE BILL NO. 392

2 INTRODUCED BY C. KAUFMANN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE AUTHORITY OF THE COMMISSIONER OF
5 POLITICAL PRACTICES TO ENFORCE LAWS PERTAINING TO ANONYMOUS ELECTION MATERIAL;
6 PROVIDING A CIVIL PENALTY; PROVIDING A HEARING PROCESS TO CONTEST A CIVIL PENALTY;
7 PROVIDING FOR THE COLLECTION AND DISPOSITION OF PENALTIES; AMENDING SECTION 13-35-225,
8 MCA; AND PROVIDING AN APPLICABILITY DATE."

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

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12 NEW SECTION. **Section 1. Civil penalties for anonymous materials -- option for hearing --**
13 **collection and disposition of penalty amounts.** (1) In addition to any other penalties or remedies established
14 by law, a person whose election materials violate a provision of 13-35-225(1) or (2) is subject to a civil penalty
15 of \$300 for each notice and compliance order issued under 13-35-225(7).

16 (2) (a) A person against whom a civil penalty is imposed pursuant to this section may request a hearing
17 before the commissioner within 10 days of receiving a notice from the commissioner of imposition of a civil
18 penalty. Upon receipt of a timely request, the commissioner shall hold an informal contested case hearing under
19 the provisions of Title 2, chapter 4, part 6.

20 (b) At the hearing, the commissioner shall consider any mitigating factors or circumstances and may
21 reduce or waive the civil penalty.

22 (c) Based on the evidence, statements, or arguments presented at the hearing, the commissioner shall
23 issue a final written decision on the contested case.

24 (3) If the outcome of the informal contested case hearing described in subsection (2) is not acceptable
25 to the person subject to a notice and compliance order issued under 13-35-225(7), the person may pursue judicial
26 review as authorized in Title 2, chapter 4, part 7.

27 (4) (a) Penalties not paid in a timely manner are subject to collection pursuant to Title 17, chapter 4, part
28 1.

29 (b) Subject to 17-4-106, penalties paid pursuant to this section must be deposited in the general fund.

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1 **Section 2.** Section 13-35-225, MCA, is amended to read:

2 **"13-35-225. Election materials not to be anonymous -- statement of accuracy -- notice -- penalty.**

3 (1) All communications advocating the success or defeat of a candidate, political party, or ballot issue through
4 any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill,
5 bumper sticker, internet website, or other form of general political advertising must clearly and conspicuously
6 include the attribution "paid for by" followed by the name and address of the person who made or financed the
7 expenditure for the communication. ~~When~~ The attribution must contain:

8 (a) for election material financed by a candidate or a candidate's campaign finances, the expenditure,
9 ~~the attribution must be~~ the name and the address of the candidate or the candidate's campaign; and

10 (b) In the case of for election material financed by a political committee, the attribution must be the name
11 of the committee, the name of the committee treasurer, and the address of the committee or the committee
12 treasurer.

13 (2) Communications in a partisan election financed by a candidate or a political committee organized
14 on the candidate's behalf must state the candidate's party affiliation or include the party symbol.

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

17 (i) a reference to the particular vote or votes upon which the information is based;

18 (ii) a disclosure of contrasting votes known to have been made by the candidate on the same issue if
19 closely related in time; and

20 (iii) a statement, signed as provided in subsection (3)(b), that to the best of the signer's knowledge, the
21 statements made about the other candidate's voting record are accurate and true.

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

23 (i) by the candidate if the election material was prepared for the candidate or the candidate's political
24 committee and includes information about another candidate's voting record; or

25 (ii) by the person financing the communication or the person's legal agent if the election material was not
26 prepared for a candidate or a candidate's political committee.

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

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

4 (a) file notification of the omission with the commissioner of political practices within 5 days of the
5 discovery or notification;

6 (b) bring the material into compliance with subsections (1) through (3); and

7 (c) withdraw any noncompliant communication from circulation as soon as reasonably possible.

8 (6) Whenever the commissioner receives a complaint alleging a violation of subsection (1) or (2), the
9 commissioner shall as soon as practicable assess the merits of the complaint.

10 (7) (a) If the commissioner determines that the complaint has merit, the commissioner shall notify the
11 complainant and the candidate or political committee of the commissioner's determination. The notice must state
12 that the candidate or political committee shall bring the material into compliance as required under this section:

13 (i) within 5 days after receiving the notification if the notification occurs more than 7 days prior to an
14 election; or

15 (ii) within 24 hours after receiving the notification if the notification occurs 7 days or less prior to an
16 election.

17 (b) When notifying the candidate or campaign committee under subsection (7)(a), the commissioner shall
18 include a statement that if the candidate or political committee fails to bring the material into compliance as
19 required under this section, the candidate or political committee is subject to a civil penalty pursuant to 13-37-128
20 or [section 1], or both."

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22 NEW SECTION. Section 3. Codification instruction. [Section 1] is intended to be codified as an
23 integral part of Title 13, chapter 37, and the provisions of Title 13, chapter 37, apply to [section 1].

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25 NEW SECTION. Section 4. Applicability. [This act] applies to proceedings begun on or after October
26 1, 2013.

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