

1 HOUSE BILL NO. 721

2 INTRODUCED BY W. CURDY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING FAIR NOTICE TO A CANDIDATE OF CAMPAIGN
5 ADVERTISING MATERIAL MENTIONING THE CANDIDATE; REVISING THE TIME PERIOD WITHIN WHICH
6 THE MATERIAL MUST BE PROVIDED TO THE CANDIDATE; PROVIDING THAT CERTAIN MATERIAL
7 MENTIONING A CANDIDATE'S VOTING RECORD MUST BE FILED WITH THE COMMISSIONER OF
8 POLITICAL PRACTICES AND MADE PUBLICLY AVAILABLE; PROVIDING FOR A PRIVATE RIGHT OF
9 ACTION FOR A MISREPRESENTATION OF A CANDIDATE'S VOTING RECORD; AND AMENDING SECTIONS
10 13-35-402, 13-35-403, AND 13-37-131, MCA."

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

13
14 **Section 1.** Section 13-35-402, MCA, is amended to read:
15 **"13-35-402. Fair notice period before election.** (1) A candidate or a political committee shall at the time
16 specified in subsection (3) provide to candidates listed in subsection (2) any final copy of campaign advertising
17 in print media, in printed material, or by broadcast media that is intended for public distribution in the ~~40~~ 60 days
18 prior to ~~an election day~~ the date absentee ballots are to be available for the election under 13-13-205(1)(a)(ii)
19 unless:

20 (a) identical material was already published or broadcast; or
21 (b) the material does not identify or mention the opposing candidate.
22 (2) The material must be provided to all other candidates who have filed for the same office and who are
23 individually identified or mentioned in the advertising, except candidates mentioned in the context of
24 endorsements.

25 (3) Final copies of material described in subsection (1) must be provided to the candidates listed in
26 subsection (2) at the following times:
27 (a) at the time the material is published or broadcast or disseminated to the public;
28 (b) if the material is disseminated by direct mail, on the date of the postmark; or
29 (c) if the material is prepared and disseminated by hand, on the day the material is first being made
30 available to the general public.

1 (4) The copy of the material that must be provided to the candidates listed in subsection (2) must be
2 provided by electronic mail, facsimile transmission, or hand delivery, with a copy provided by direct mail if the
3 recipient does not have available either electronic mail or facsimile transmission. If the material is for broadcast
4 media, the copy provided must be a written transcript of the broadcast.

5 (5) If the material references a candidate's voting record:

6 (a) the candidate or political committee must provide to the commissioner of political practices in the
7 manner described in subsection (4):

8 (i) a copy of the material; and

9 (ii) a description of the factual basis upon which the claims regarding a candidate's voting record is based,
10 including a reference to the particular vote or votes upon which the information is based. The reference to the
11 particular vote or votes must include:

12 (A) the year in which the vote was cast; and

13 (B) the bill number or resolution number on which the vote was cast; and

14 (b) the commissioner shall make the material and the description required under subsection (5)(a)
15 publicly available so that the public may research the veracity of the claims made in the material."

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17 **Section 2.** Section 13-35-403, MCA, is amended to read:

18 **"13-35-403. Penalties.** A person who violates 13-35-402 is liable in a civil action pursuant to 13-37-128
19 and 13-37-131."

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21 **Section 3.** Section 13-37-131, MCA, is amended to read:

22 **"13-37-131. Misrepresentation of voting record -- private right of action.** (1) It is unlawful for a
23 person to misrepresent a candidate's public voting record with knowledge that the assertion is false or with a
24 reckless disregard of whether or not the assertion is false.

25 (2) It is unlawful for a person to misrepresent to a candidate another candidate's public voting record with
26 knowledge that the assertion is false or with a reckless disregard of whether or not the assertion is false.

27 (3) For the purposes of this section, the public voting record of a candidate who was previously a
28 member of the legislature includes a vote of that candidate recorded in committee minutes or in journals of the
29 senate or the house of representatives. Failure of a person to verify a public voting record is evidence of the
30 person's reckless disregard if the statement made by the person or the information provided to the candidate is

1 false.

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

5 (5) (a) Any person who has notified the commissioner and the appropriate county attorney in writing that
6 there is reason to believe that a person is guilty of violating subsection (1) or (2) may bring a civil action against
7 the alleged violator in district court if:

8 (i) the commissioner and the appropriate county attorney have failed to commence an action pursuant
9 to this section within 90 days after receiving the notice; and

10 (ii) the commissioner and the county attorney fail to commence an action within 10 days after receiving
11 a written notice that the person will bring a private action if the commissioner or the county attorney does not bring
12 an action.

13 (b) The date each notification is received under subsection (5)(a) tolls the applicable time period.

14 (c) If the person who brings a private civil action pursuant to this subsection (5) prevails, the person is
15 entitled to be reimbursed by the person found guilty of the violation for all trial costs and reasonable attorney fees
16 incurred by the plaintiff. A person violating subsection (1) or (2) when an action is brought pursuant to subsection
17 (5) is liable in a civil action for an amount up to \$1,000 for each violation.

18 (d) If a private action brought by a person under this subsection is dismissed and the court also finds
19 that the action was brought without reasonable cause, the court may order the person commencing the action
20 to pay all trial costs and reasonable attorney fees incurred by the defendant.

21 (e) A private action under this subsection (5) is subject to the provisions of 13-37-130."

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