

HOUSE BILL NO. 668

INTRODUCED BY M. MARLER

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ETHICS LAWS RELATED TO PUBLIC SERVICE ANNOUNCEMENTS; ESTABLISHING REQUIREMENTS FOR THE DISCLOSURE OF INFORMATION ABOUT THE PUBLIC SERVICE ANNOUNCEMENTS PRODUCED BY ELECTED STATE OFFICIALS; PROVIDING FOR A PENALTY; AND AMENDING SECTIONS 2-2-121 AND 2-2-136, MCA."

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

NEW SECTION. Section 1. Disclosure of public service announcement information. (1) An elected

state official who produces one or more public service announcements in which the official appears or that includes the official's name, picture, or voice shall provide on the official's agency website the following information about each announcement:

- (a) the subject and general purpose of the announcement;
- (b) the identity of any other individual who appears or whose picture or voice is featured in the announcement;
- (c) the full transcript, audio recording, or video recording of the announcement;
- (d) the cost of producing and distributing the announcement; and
- (e) methods used by the official to distribute the announcement, including a list of all print or broadcast media outlets or other organizations or governmental entities provided with the announcement and any social media platforms used by the agency to distribute the announcement.

(2) The disclosure required under subsection (1) must be provided no later than 24 hours after the initial release of the public service announcement.

Section 2. 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



1 officer's or employee's private business purposes;

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

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

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

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

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

14 (3) (a) Except as provided in subsection (3)(b), a public officer or public employee may not use public
15 time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political
16 committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the
17 use is:

18 (i) authorized by law; or

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

21 (b) As used in this subsection (3), "properly incidental to another activity required or authorized by law"
22 does not include any activities related to solicitation of support for or opposition to the nomination or election of
23 a person to public office or political committees organized to support or oppose a candidate or candidates for
24 public office. With respect to ballot issues, properly incidental activities are restricted to:

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

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

1 for any form of commercial advertising in support of or opposition to a bond issue or levy submitted to the
2 electors.

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

5 (d) (i) If the public officer or public employee is a Montana highway patrol chief or highway patrol officer
6 appointed under Title 44, chapter 1, the term "equipment" as used in this subsection (3) includes the chief's or
7 officer's official highway patrol uniform.

8 (ii) A Montana highway patrol chief's or highway patrol officer's title may not be referred to in the
9 solicitation of support for or opposition to any political committee, the nomination or election of any person to
10 public office, or the passage of a ballot issue.

11 (4) (a) A candidate, as defined in 13-1-101(8)(a), may not use or permit the use of state funds for any
12 advertisement or public service announcement in a newspaper, on radio, or on television that contains the
13 candidate's name, picture, or voice except in the case of a state or national emergency and then only if the
14 announcement is reasonably necessary to the candidate's official functions.

15 (b) A state officer may not use or permit the use of public time, facilities, equipment, supplies, personnel,
16 or funds to produce, print, or broadcast any advertisement or public service announcement in a newspaper, on
17 radio, or on television that contains the state officer's name, picture, or voice except in the case of a state or
18 national emergency if the announcement is reasonably necessary to the state officer's official functions or in the
19 case of an announcement directly related to a program or activity under the jurisdiction of the office or position
20 to which the state officer was elected or appointed.

21 (c) An elected state officer who produces a public service announcement shall comply with the disclosure
22 provisions of [section 1].

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

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

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

30 (6) A public officer or public employee may not engage in any activity, including lobbying, as defined in

1 5-7-102, on behalf of an organization, other than an organization or association of local government officials, of
2 which the public officer or public employee is a member while performing the public officer's or public employee's
3 job duties. The provisions of this subsection do not prohibit a public officer or public employee from performing
4 charitable fundraising activities if approved by the public officer's or public employee's supervisor or authorized
5 by law.

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

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

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

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

19

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

21 **"2-2-136. Enforcement for state officers, legislators, and state employees -- referral of complaint**
22 **involving county attorney.** (1) (a) A person alleging a violation of this part by a state officer, legislator, or state
23 employee may file a complaint with the commissioner of political practices. The commissioner does not have
24 jurisdiction for a complaint concerning a legislator if a legislative act is involved in the complaint. The
25 commissioner also has jurisdiction over complaints against a county attorney that are referred by a local
26 government review panel pursuant to 2-2-144 or filed by a person directly with the commissioner pursuant to
27 2-2-144(6). If a complaint is filed against the commissioner or another individual employed in the office of the
28 commissioner, the complaint must be resolved in the manner provided for in 13-37-111(5). The commissioner
29 may request additional information from the complainant or the person who is the subject of the complaint to
30 make an initial determination of whether the complaint states a potential violation of this part.

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

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

11 (2) (a) Except as provided in subsection (2)(b), if the commissioner determines that a violation of this
12 part has occurred, the commissioner may impose an administrative penalty of not less than \$50 or more than
13 \$1,000.

14 (b) If the commissioner determines that a violation of 2-2-121(4)(b) or (c) has occurred, the commissioner
15 may impose an administrative penalty of not less than \$500 or more than \$10,000.

16 (c) If the violation was committed by a state employee, the commissioner may also recommend that the
17 employing state agency discipline the employee. The employing entity of a state employee may take disciplinary
18 action against an employee for a violation of this part, regardless of whether the commissioner makes a
19 recommendation for discipline. The commissioner may assess the costs of the proceeding against the person
20 bringing the charges if the commissioner determines that a violation did not occur or against the officer or
21 employee if the commissioner determines that a violation did occur.

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

24 (4) Except for records made public in the course of a hearing held under subsection (1) and records that
25 are open for public inspection pursuant to Montana law, a complaint and records obtained or prepared by the
26 commissioner in connection with an investigation or complaint are confidential documents and are not open for
27 public inspection. The complainant and the person who is the subject of the complaint shall maintain the
28 confidentiality of the complaint and any related documents released to the parties by the commissioner until the
29 commissioner issues a decision. However, the person who is the subject of a complaint may waive, in writing,
30 the right of confidentiality provided in this subsection. If a waiver is filed with the commissioner, the complaint and

1 any related documents must be open for public inspection. The commissioner's decision issued after a hearing
2 is a public record open to inspection.

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

6 (6) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this part."
7

8 NEW SECTION. **Section 4. Codification instruction.** [Section 1] is intended to be codified as an
9 integral part of Title 2, chapter 2, part 1, and the provisions of Title 2, chapter 2, part 1, apply to [section 1].

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