

1 SENATE BILL NO. 355

2 INTRODUCED BY B. MOLNAR

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING DISQUALIFICATION OF CERTAIN JUDGES
5 RECEIVING POLITICAL CONTRIBUTIONS; PROVIDING DEFINITIONS; ALLOWING A PERSON TO FILE A
6 COMPLAINT WITH THE JUDICIAL STANDARDS COMMISSION, THE COMMISSIONER OF POLITICAL
7 PRACTICES, OR A DISTRICT COURT; AMENDING SECTIONS 2-2-136 AND 3-1-1105, MCA; AND
8 REPEALING SECTION 3-1-609, MCA."

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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. Disqualification of judge receiving political contribution -- definition**

13 -- **penalties.** (1) A judge may not sit or act in a proceeding if:

14 (a) (i) the judge has received a contribution in excess of the amount established in 13-37-216 from
15 a party to the proceeding, a party's attorney, or the attorney's law firm; and

16 (ii) the contribution from the entity described in subsection (1)(a)(i) was received in support of the
17 judge's most recent election or in anticipation of an upcoming election;

18 (b) a party to the proceeding, a party's attorney, or the attorney's law firm contributed to an
19 independent committee, incidental committee, or a third-party organization that made an independent
20 expenditure to support the judge's election; or

21 (c) a party, a party's attorney, or the attorney's law firm contributed to an organization that gave
22 financial support, in-kind contributions, or made endorsements related to the judge's election.

23 (2) A party, a party's attorney, or the attorney's law firm who knows or should have known of the
24 activities listed in subsection (1) shall disclose this information to the judge.

25 (3) A judge who is required to be disqualified as provided in subsection (1) shall disclose any
26 contribution that was the basis for the judge's disqualification. The disclosure must be made in a legal notice
27 and on the record.

28 (4) A person alleging a violation of this section may file a complaint with:

1 (a) the commissioner of political practices under the ethics provisions of Title 2, chapter 2, part 1,
2 for an allegation against a judge;

3 (b) the judicial standards commission as provided in Title 3, chapter 1, part 11, for an allegation
4 against a judge; or

5 (c) a district court for an allegation against a judge or a party to a proceeding.

6 (5) Unless otherwise required to protect an individual's privacy, all documents related to
7 complaints and investigations made to enforce this section are public as is allowed under Article II, section 9, of
8 the Montana constitution.

9 (6) An attempt by a person to circumvent the provisions of this section is a felony punishable as
10 provided in 46-18-213.

11 (7) As used in this section, the following definitions apply:

12 (a) "Contribution" has the meaning provided in 13-1-101.

13 (b) "Incidental committee" has the meaning provided in 13-1-101.

14 (c) "Independent committee" has the meaning provided in 13-1-101.

15 (d) "Independent expenditure" has the meaning provided in 13-1-101.

16 (e) "Judge" means a justice of the supreme court or a district court judge.

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

19 **"2-2-136. Enforcement for state officers, legislators, and state employees -- referral of**
20 **complaint involving county attorney.** (1) (a) A person alleging a violation of this part by a state officer,
21 legislator, or state employee may file a complaint with the commissioner of political practices.

22 (b) A person alleging a violation of [section 1] by a justice of the supreme court or a district court
23 judge may file a complaint with the commissioner of political practices. The commissioner shall prioritize
24 resolution of the complaint if it is filed prior to an election.

25 (c) The commissioner does not have jurisdiction for a complaint concerning a legislator if a
26 legislative act is involved in the complaint. The commissioner also has jurisdiction over complaints against a
27 county attorney that are referred by a local government review panel pursuant to 2-2-144 or filed by a person
28 directly with the commissioner pursuant to 2-2-144(6). If a complaint is filed against the commissioner or

1 another individual employed in the office of the commissioner, the complaint must be resolved in the manner
2 provided for in 13-37-111(5).

3 ~~(b)~~(d) The commissioner may request additional information from the complainant or the person who
4 is the subject of the complaint to make an initial determination of whether the complaint states a potential
5 violation of this part.

6 ~~(c)~~(e) The commissioner may dismiss a complaint that is frivolous, does not state a potential violation
7 of this part, or does not contain sufficient allegations to enable the commissioner to determine whether the
8 complaint states a potential violation of this part.

9 ~~(d)~~(f) ~~When~~ Unless required by [section 1], when a complaint is filed, the commissioner may issue
10 statements or respond to inquiries to confirm that a complaint has been filed, to identify against whom it has
11 been filed, and to describe the procedural aspects and status of the case.

12 (2) (a) If the commissioner determines that the complaint states a potential violation of this part,
13 the commissioner shall hold an informal contested case hearing on the complaint as provided in Title 2, chapter
14 4, part 6. However, if the issues presented in a complaint have been addressed and decided in a prior decision
15 and the commissioner determines that no additional factual development is necessary, the commissioner may
16 issue a summary decision without holding an informal contested case hearing on the complaint.

17 (b) Except as provided in 2-3-203, an informal contested case proceeding must be open to the
18 public. Except as provided in Title 2, chapter 6, part 10, documents submitted to the commissioner for the
19 informal contested case proceeding are presumed to be public information.

20 (c) The commissioner shall issue a decision based on the record established before the
21 commissioner. The decision issued after a hearing is public information open to inspection.

22 (3) (a) Except as provided in subsection (3)(b) and [section 1] for a justice of the supreme court or
23 a district court judge, if the commissioner determines that a violation of this part has occurred, the
24 commissioner may impose an administrative penalty of not less than \$50 or more than \$1,000.

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

27 (c) If the violation was committed by a state employee, the commissioner may also recommend
28 that the employing state agency discipline the employee. The employing entity of a state employee may take

1 disciplinary action against an employee for a violation of this part, regardless of whether the commissioner
2 makes a recommendation for discipline.

3 (d) The commissioner may assess the costs of the proceeding against the person bringing the
4 charges if the commissioner determines that a violation did not occur or against the officer or employee if the
5 commissioner determines that a violation did occur.

6 (4) A party may seek judicial review of the commissioner's decision, as provided in Title 2, chapter
7 4, part 7, after a hearing, a dismissal, or a summary decision issued pursuant to this section.

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

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11 **Section 3.** Section 3-1-1105, MCA, is amended to read:

12 **"3-1-1105. Confidential proceedings -- rules for commission.** (1) Except as provided in [section
13 1(5)], 3-1-1107, and 3-1-1121 through 3-1-1126, all papers filed with and proceedings before the commission or
14 masters are confidential and the filing of papers with and the testimony given before the commission or masters
15 is privileged communication.

16 (2) The commission shall make rules for the conduct of its affairs and the enforcement of
17 confidentiality consistent with this part."

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19 NEW SECTION. Section 4. Repealer. The following section of the Montana Code Annotated is
20 repealed:

21 3-1-609. Judicial conflict of interest -- recusal -- definition.

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23 NEW SECTION. Section 5. Codification instruction. [Section 1] is intended to be codified as an
24 integral part of Title 3, chapter 1, part 6, and the provisions of Title 3, chapter 1, part 6, apply to [section 1].

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