

HOUSE BILL NO. 378

INTRODUCED BY J. HAMILTON, C. POPE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO CANDIDATE REPORTING AND DISCLOSURE; REQUIRING THE COMMISSIONER OF POLITICAL PRACTICES TO REVIEW A BUSINESS DISCLOSURE STATEMENT BEFORE FILING AND TO EXTEND CERTAIN CANDIDATE DISCLOSURE FILING DEADLINES UNDER CERTAIN CIRCUMSTANCES; DISQUALIFYING A CANDIDATE FROM THE BALLOT UNDER CERTAIN CIRCUMSTANCES; PROHIBITING PARTIES FROM REPLACING DISQUALIFIED PARTISAN CANDIDATES ON THE BALLOT UNDER CERTAIN CIRCUMSTANCES; REQUIRING CERTAIN NOTICE PROVISIONS WHEN A CANDIDATE DECLARES OR PETITIONS FOR A POSITION; AND AMENDING SECTIONS 2-2-106, 13-10-201, 13-10-204, 13-10-211, 13-10-326, 13-10-327, 13-10-501, 13-37-124, AND 13-37-126, MCA."

WHEREAS, the holding of public office is a public trust; and

WHEREAS, candidate compliance with business disclosure and campaign finance disclosure requirements constitutes a commitment to upholding transparency and the public trust; and

WHEREAS, the refusal to fully and timely file business disclosure and campaign finance disclosures constitutes violations of the very public trust that a candidate seeks to protect by becoming an elected official.

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

NEW SECTION. Section 1. Late candidate reports -- warning -- removal from ballot -- civil fine.

(1) (a) (i) If a candidate fails to timely file a report required under 13-37-226(1)(b) in March, April, or June in the year of an election in which the candidate participates, within 5 days of the filing date the commissioner shall promptly notify the candidate of the omission and that the candidate may make a written request to the commissioner for relief from the filing date deadline. Notification by the commissioner may be accomplished by written or electronic communication or by telephone. If the commissioner receives a written request from the candidate, the commissioner shall grant an extension until 20 days after the report's original filing deadline.

1 (ii) An extension may not be granted for a report required under 13-37-226(1)(b) in May in the year
2 of an election in which the candidate participates.

3 (b) In addition to any other penalty provided by law, if the candidate twice fails to file a mandatory
4 report required under 13-37-226(1)(b) in March, April, May, or June in the year of an election in which the
5 candidate participates by the reporting deadline or, if an extension was granted, before the extension provided
6 pursuant to subsection (1)(a), whichever is later, and the two unfiled reports are for consecutive reporting
7 periods, the candidate is disqualified from appearing on the official general election ballot. If the candidate is
8 disqualified under this section, the commissioner shall prepare the notification as provided in 13-37-126 so that
9 the candidate's name may not appear on the official ballot.

10 (c) Once a mandatory report is filed, the content of the report must be inspected as provided in 13-
11 37-121. Nothing in this section prevents the commissioner from issuing an order of noncompliance pursuant to
12 13-37-121 concerning the failure to file a report or the filing of a report that does not conform to law.

13 (2) (a) In addition to any other penalties established by law, if a candidate fails to timely file a
14 report required under 13-37-226(1)(b) in August, September, October, or November in the year of an election in
15 which the candidate participates, the candidate is subject to a civil penalty of \$50 for each working day that the
16 report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report. A
17 person against whom a civil penalty is imposed pursuant to this subsection (2) may request a hearing within 10
18 days of receiving a notice of imposition of a civil penalty. On receipt of a timely request, the commissioner shall
19 grant an informal contested case hearing as provided in Title 2, chapter 4, part 6, before a hearing examiner.
20 On the filing of a timely request for a hearing, the imposition of the daily civil penalty provided for in this section
21 must be suspended until the commissioner issues a decision. At the hearing, the hearing examiner shall
22 consider any factors or circumstances in mitigation and may reduce or waive the civil penalty.

23 (b) The penalty imposed in subsection (2)(a) is not subject to the procedural requirements
24 contained in 13-37-124.

25 (c) All civil penalties imposed pursuant to this section must be deposited in the state general fund.

26 (3) Nothing in this section may be construed to apply to a report other than the reports required
27 under 13-37-226(1)(b).

28

1 **Section 2.** Section 2-2-106, MCA, is amended to read:

2 **"2-2-106. Disclosure.** (1) (a) Prior to December 15 of each even-numbered year, each state officer,
3 holdover senator, supreme court justice, and district court judge shall file with the commissioner of political
4 practices a business disclosure statement on a form provided by the commissioner. An individual filing pursuant
5 to subsection (1)(b) or (1)(c) is not required to file under this subsection (1)(a) during the same period.

6 (b) Each candidate for a statewide or a state office elected from a district shall, within 5 days of the
7 time that the candidate files for office, ~~file electronically~~ transmit a completed business disclosure statement
8 with to the commissioner of political practices on a form provided by the commissioner. The commissioner, in
9 the commissioner's discretion, may grant a waiver to the requirement that a business disclosure statement be
10 filed electronically.

11 (c) An individual appointed to office who would be required to file under subsection (1)(a) or (1)(b)
12 is required to file the business disclosure statement at the earlier of the time of submission of the person's
13 name for confirmation or the assumption of the office.

14 (2) Except as provided in subsection ~~(4)~~ (5), the statement must provide the following information:

15 (a) the name, address, and type of business of the individual;

16 (b) each present or past employing entity from which benefits, including retirement benefits, are
17 currently received by the individual;

18 (c) each business, firm, corporation, partnership, and other business or professional entity or trust
19 in which the individual holds an interest;

20 (d) each entity not listed under subsections (2)(a) through (2)(c) in which the individual is an officer
21 or director, regardless of whether or not the entity is organized for profit; and

22 (e) all real property, other than a personal residence, in which the individual holds an interest. Real
23 property may be described by general description.

24 (3) (a) Within 10 days of receiving the business disclosure statement from a candidate required to
25 file a business disclosure statement under subsection (1)(b), the commissioner shall accept or reject the
26 business disclosure statement for filing. The commissioner may not evaluate the substantive merit of the
27 responses under this review, but the commissioner shall reject the business disclosure statement if it is
28 unresponsive to the requirements of subsection (2). If the commissioner rejects the filing, the commissioner

1 shall promptly inform the candidate of the rejection and give the candidate 5 days to correct the rejected filing.

2 (b) If the candidate does not submit a business disclosure statement sufficient for acceptance by
 3 the commissioner by the deadline in subsection (1)(b) or, if a filing was rejected, by the deadline provided
 4 pursuant to subsection (3)(a), the candidate is disqualified from appearing on the official general election ballot.
 5 If the candidate is disqualified under this section, the commissioner shall prepare the notification provided for in
 6 13-37-126 that the candidate's name may not appear on the official general election ballot.

7 ~~(3)~~(4) An individual may not assume or continue to exercise the powers and duties of the office to
 8 which that individual has been elected or appointed until the statement has been filed as provided in subsection
 9 (1).

10 ~~(4)~~(5) An individual required to file a business disclosure statement may certify that the information
 11 required by subsection (2) has not changed from the most recent statement filed by the individual. The
 12 commissioner shall provide a certification form.

13 ~~(5)~~(6) The commissioner of political practices shall make the business disclosure statements and
 14 certification forms available to any individual upon request."
 15

16 **Section 3.** Section 13-10-201, MCA, is amended to read:

17 **"13-10-201. Declaration for nomination -- term limitations.** (1) Each candidate in the primary
 18 election, except nonpartisan candidates filing under the provisions of Title 13, chapter 14, shall file a declaration
 19 for nomination with the secretary of state or election administrator. Except for a candidate under 13-38-201(4)
 20 or a candidate covered under 7-1-205, a candidate may not file for more than one public office. Each candidate
 21 for governor shall file a joint declaration for nomination with a candidate for lieutenant governor.

22 (2) A declaration for nomination must be filed in the office of:

23 (a) the secretary of state for placement of a name on the ballot for the presidential preference
 24 primary, a congressional office, a state or district office to be voted for in more than one county, a member of
 25 the legislature, or a judge of the district court; or

26 (b) the election administrator for a county, municipal, precinct, or district office (other than a
 27 member of the legislature or a judge of the district court) to be voted for in only one county.

28 (3) Each candidate shall sign the declaration and send with it the required filing fee or, in the case

1 of an indigent candidate, send with it the documents required by 13-10-203. Unless filed electronically with the
2 secretary of state, the declaration for nomination must be acknowledged by an officer empowered to
3 acknowledge signatures or by the officer of the office at which the filing is made.

4 (4) The declaration for nomination must include an oath of the candidate that includes wording
5 substantially as follows: "I hereby affirm that I possess, or will possess within constitutional and statutory
6 deadlines, the qualifications prescribed by the Montana constitution and the laws of the United States and the
7 state of Montana." The candidate affirmation included in this oath is presumed to be valid unless proven
8 otherwise in a court of law.

9 (5) The declaration, when filed, is conclusive evidence that the elector is a candidate for
10 nomination by the elector's party. For a partisan election, an elector may not file a declaration for more than one
11 party's nomination.

12 (6) (a) The declaration for nomination must be in the form and contain the information prescribed
13 by the secretary of state.

14 (b) A person seeking nomination to the legislature shall provide the secretary of state with a street
15 address, legal description, or road designation to indicate the person's place of residence. If a candidate for the
16 legislature changes residence, the candidate shall, within 15 days after the change, notify the secretary of state
17 on a form prescribed by the secretary of state.

18 (c) The secretary of state and election administrator shall furnish declaration for nomination forms
19 to individuals requesting them.

20 (7) Except as provided in 13-10-211, a candidate's declaration for nomination must be filed no
21 sooner than 145 days before the election in which the office first appears on the ballot and no later than 5 p.m.,
22 85 days before the date of the primary election.

23 (8) A properly completed and signed declaration for nomination form may be sent by facsimile
24 transmission, electronically mailed, delivered in person, or mailed to the election administrator or to the
25 secretary of state.

26 (9) For the purposes of implementing Article IV, section 8, of the Montana constitution, the
27 secretary of state shall apply the following conditions:

28 (a) A term of office for an official serving in the office or a candidate seeking the office is

1 considered to begin on January 1 of the term for which the official is elected or for which the candidate seeks
2 election and to end on December 31 of the term for which the official is elected or for which the candidate seeks
3 election.

4 (b) A year is considered to start on January 1 and to end on the following December 31.

5 (c) "Current term", as used in Article IV, section 8, of the Montana constitution, has the meaning
6 provided in 2-16-214.

7 (10) A declaration for nomination must prominently display a statement substantially as follows:

8 "A candidate is subject to removal from the ballot and to fines for failure to file a candidate campaign
9 finance disclosure report pursuant to [section 1] and 13-37-126 and a business disclosure statement, if
10 applicable, pursuant to 2-2-106."
11

12 **Section 4.** Section 13-10-204, MCA, is amended to read:

13 **"13-10-204. Write-in nominations.** (1) An individual nominated by having the individual's name
14 written in and counted as provided in 13-15-206(5) or otherwise placed on the primary ballot and desiring to
15 accept the nomination may not have the individual's name appear on the general election ballot unless the
16 individual:

17 (a) received at least 5% of the total votes cast for the successful candidate for the same office at
18 the last general election;

19 (b) files with the secretary of state or election administrator, no later than 10 days after the official
20 canvass, a written declaration indicating acceptance of the nomination; and

21 (c) complies with the provisions of 13-37-126.

22 (2) A write-in candidate who was exempt from filing a declaration of intent under 13-10-211 shall,
23 at the time of filing the declaration of acceptance, pay the filing fee specified in 13-10-202 or, if indigent, file the
24 appropriate documents described in 13-10-203.

25 (3) The written declaration filed pursuant to subsection (1)(b) must prominently display a statement
26 substantially as follows:

27 "A candidate is subject to removal from the ballot and to fines for failure to file a required campaign
28 finance disclosure report pursuant to [section 1] and 13-37-126 and a business disclosure statement, if

1 applicable, pursuant to 2-2-106."

2

3 **Section 5.** Section 13-10-211, MCA, is amended to read:

4 **"13-10-211. Declaration of intent for write-in candidates.** (1) Except as provided in subsection (7),

5 a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent.

6 Except for a candidate under 13-38-201(4) or a candidate covered under 7-1-205, a candidate may not file for

7 more than one public office. The declaration of intent must be filed with the secretary of state or election

8 administrator, depending on where a declaration of nomination for the desired office is required to be filed

9 under 13-10-201, or with the school district clerk for a school district office. When a county election

10 administrator is conducting the election for a school district, the school district clerk or school district office that

11 receives the declaration of intent shall notify the county election administrator of the filing. Except as provided in

12 13-1-403, 13-1-503, 20-3-305(3)(b), and subsection (2) of this section, the declaration must be filed no later

13 than 5 p.m. on the 10th day before the earliest date established under 13-13-205 on which a ballot must be

14 available and must contain:

15 (a) the candidate's name, including:

16 (i) the candidate's first and last names;

17 (ii) the candidate's initials, if any, used instead of a first name, or first and middle name, and the

18 candidate's last name;

19 (iii) the candidate's nickname, if any, used instead of a first name, and the candidate's last name;

20 and

21 (iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate's last

22 name;

23 (b) the candidate's mailing address;

24 (c) a statement declaring the candidate's intention to be a write-in candidate;

25 (d) the title of the office sought;

26 (e) the date of the election;

27 (f) the date of the declaration; ~~and~~

28 (g) the candidate's signature; and

1 (h) a statement substantially as follows:

2 "A candidate is subject to removal from the ballot and to fines for failure to file a required campaign
3 finance disclosure report pursuant to [section 1] and 13-37-126 and a business disclosure statement, if
4 applicable, pursuant to 2-2-106."

5 (2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later
6 than 5 p.m. on the day before the election if, after the deadline prescribed in subsection (1), a candidate for the
7 office that the write-in candidate is seeking dies or is charged with a felony offense and if the election has not
8 been canceled as provided by law.

9 (3) The secretary of state shall notify each election administrator of the names of write-in
10 candidates who have filed a declaration of intent with the secretary of state. Each election administrator shall
11 notify the election judges in the county or district of the names of write-in candidates who have filed a
12 declaration of intent.

13 (4) A properly completed and signed declaration of intent may be provided to the election
14 administrator or secretary of state:

15 (a) by facsimile transmission;

16 (b) in person;

17 (c) by mail; or

18 (d) by electronic mail.

19 (5) A declaration is not valid until the filing fee required pursuant to 13-10-202 is received by the
20 secretary of state or the election administrator.

21 (6) A write-in candidate who files a declaration of intent for a general election may not file with a
22 partisan, nonpartisan, or independent designation.

23 (7) Except as provided in 13-38-201(4)(b), the requirements in subsection (1) do not apply if:

24 (a) an election is held;

25 (b) a person's name is written in on the ballot;

26 (c) the person is qualified for and seeks election to the office for which the person's name was
27 written in; and

28 (d) no other candidate has filed a declaration or petition for nomination or a declaration of intent."

1

2 **Section 6.** Section 13-10-326, MCA, is amended to read:

3 **"13-10-326. Vacancy prior to primary election.** (1) If a candidate for nomination for a partisan office
4 dies or withdraws before the candidate filing deadline established in 13-10-201(7), the affected political party
5 may appoint someone to replace the candidate by the procedure provided in 13-10-327.

6 (2) Except as provided in subsection ~~(3)~~ (4), if a candidate for nomination for a partisan office dies
7 after the candidate filing deadline established in 13-10-201(7), or is disqualified pursuant to 13-37-126(1)(a)
8 from having the candidate's name appear on the primary election ballot, the affected political party shall appoint
9 a candidate after the primary election as provided in 13-10-327 if a candidate for that office for that party was
10 not nominated at the primary election.

11 ~~(3)~~ If a candidate for nomination for a partisan office is disqualified from having the candidate's
12 name appear on the primary election ballot pursuant to 13-37-126(1)(b), the affected political party may not
13 appoint a replacement candidate unless the candidate is a candidate for governor or lieutenant governor.

14 ~~(3)(4)~~ A political party may not appoint a candidate for an office if no candidate for nomination by that
15 party filed for the office before the primary election or if the deadline for certifying candidate names for the ballot
16 pursuant to 13-10-208 has passed."

17

18 **Section 7.** Section 13-10-327, MCA, is amended to read:

19 **"13-10-327. Vacancy after primary and prior to general election.** (1) Except as provided in 13-10-
20 328 for a vacancy in the candidacy of either governor or lieutenant governor caused by the death of a candidate
21 or as provided in subsection (2)(a) of this section, if a party candidate dies or withdraws after the primary and
22 before the general election, or if a candidate is disqualified pursuant to 13-37-126(1)(a) from having the
23 candidate's name appear on a general election ballot, the affected political party shall appoint someone to
24 replace the candidate in one of the following ways:

25 (a) For offices to be filled by the state at large, the state central committee shall make the
26 appointment as provided by the rules of the party.

27 (b) For offices to be filled in districts including more than one county, a committee appointed by the
28 county central committees of all counties in the district shall make the appointment. Procedures for the

1 appointment of the committee and making the appointment must be provided in party rules.

2 (c) For offices to be filled in counties, municipalities, or districts wholly within a county, the
3 appointment must be made under rules adopted by the county central committee.

4 (2) (a) If a candidate for election for a partisan office is disqualified from having the candidate's
5 name appear on the general election ballot pursuant to 13-37-126(1)(b) or [section 1(1)(b)], the affected political
6 party may not appoint a replacement candidate unless the candidate is a candidate for governor or lieutenant
7 governor.

8 (b) If the vacancy on the ballot created by a candidate disqualified under 13-37-126(1)(b) or
9 [section 1(1)(b)] causes no candidate to be elected, the position must be filled by a new election or by
10 appointment as may be provided by law regarding vacancies in the office.

11 ~~(2)~~(3) Except as provided in this section, appointments to fill vacancies must be made no later than
12 76 days before the election. A candidate may not officially withdraw 85 days or less before a general election.
13 However, if a candidate for partisan office dies less than 85 days before the general election, the affected
14 political party shall appoint a candidate within 5 days after being notified of the vacancy. One of the procedures
15 provided in 13-12-204 must be used to place the name of the appointee on the ballot if necessary.

16 ~~(3)~~(4) The appointing committee shall send a certificate to the officer with whom a declaration for
17 nomination for the office would be filed, with the information required on a declaration for nomination and the
18 name of the candidate for whom the appointee is to be substituted. The appointee shall send a signed and
19 acknowledged acceptance of the appointment and the filing fee for the office.

20 ~~(4)~~(5) The officer receiving the certificate of appointment, accompanied by a statement of acceptance
21 and the filing fee, shall certify the name of the appointee for the ballot."

22

23 **Section 8.** Section 13-10-501, MCA, is amended to read:

24 **"13-10-501. Petition for nomination by independent candidates or political parties not eligible**
25 **to participate in primary election.** (1) Except as provided in 13-10-504, nominations for public office by an
26 independent candidate or a political party that does not meet the requirements of 13-10-601 may be made by a
27 petition for nomination.

28 (2) The petition must contain the same information and ~~the~~ oath of the candidate as required for a

1 declaration for nomination as well as the statement required by 13-10-201(10).

2 (3) If a petition is filed by a political party, it must contain the party name and, in five words or less,
3 the principle that the body represents.

4 (4) The form of the petition must be prescribed by the secretary of state, and the secretary of state
5 shall furnish sample copies to the election administrators and on request to any individual.

6 (5) Each sheet of a petition must contain signatures of electors residing in only one county."
7

8 **Section 9.** Section 13-37-124, MCA, is amended to read:

9 **"13-37-124. Consultation and cooperation with county attorney.** (1) ~~Whenever~~ Except as
10 provided in [section 1], whenever the commissioner determines that there appears to be sufficient evidence to
11 justify a civil or criminal prosecution under chapter 35 of this title or this chapter, the commissioner shall notify
12 the county attorney of the county in which the alleged violation occurred and shall arrange to transmit to the
13 county attorney all information relevant to the alleged violation. If the county attorney fails to initiate the
14 appropriate civil or criminal action within 30 days after receiving notification of the alleged violation, the
15 commissioner may then initiate the appropriate legal action.

16 (2) A county attorney may, at any time prior to the expiration of the 30-day time period specified in
17 subsection (1), waive the right to prosecute, and the waiver authorizes the commissioner to initiate the
18 appropriate civil or criminal action.

19 (3) The provisions of subsection (1) do not apply to a situation in which the alleged violation has
20 been committed by the county attorney of a county. In this instance, the commissioner is authorized to directly
21 prosecute any alleged violation of chapter 35 of this title or this chapter.

22 (4) If a prosecution is undertaken by the commissioner, all court costs associated with the
23 prosecution must be paid by the state of Montana, and all fines and forfeitures imposed pursuant to a
24 prosecution by the commissioner, except those paid to or imposed by a justice's court, must be deposited in the
25 state general fund."
26

27 **Section 10.** Section 13-37-126, MCA, is amended to read:

28 **"13-37-126. Names not to appear on ballot.** (1) The name of a candidate may not appear on:

1 (a) the official ballot for an election if the candidate or a treasurer for a candidate fails to file any
2 statement or report as required by ~~2-2-106~~ or this chapter; or

3 (b) the official ballot for a general election if the candidate fails to file the business disclosure
4 statement as provided in 2-2-106 by the deadline specified in 2-2-106(1)(b) or, if a filing was rejected, by the
5 deadline provided in 2-2-106(3)(b).

6 (2) A vacancy on an official ballot under this section ~~that may be filled in the manner as otherwise~~
7 provided by law, ~~but~~ may not be filled by the same candidate.

8 (3) (a) In carrying out the mandate of this section, the commissioner shall, by a written statement,
9 notify the secretary of state and the election administrator conducting an election when a candidate or a
10 candidate's treasurer has not complied with 2-2-106 or the provisions of this chapter and that the candidate's
11 name may not appear on the official ballot for the relevant election or elections. If the candidate was disqualified
12 under subsection (1)(b) of this section or [section 1(1)(b)], the commissioner shall indicate whether the
13 candidate's vacancy on the ballot may be filled.

14 (b) The commissioner shall provide the notification:

15 (i) 2 calendar days before the certification deadline provided in 13-10-208 for statewide primary
16 elections and 20-20-401 for school district elections; and

17 (ii) 7 days before the certification deadline provided in 13-12-201 for general elections."
18

19 **NEW SECTION. Section 11. Codification instruction.** [Section 1] is intended to be codified as an
20 integral part of Title 13, chapter 37, part 2, and the provisions of Title 13, chapter 37, part 2, apply to [section 1].

21 - END -