

HOUSE BILL NO. 605

INTRODUCED BY J. KARJALA

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4 ABILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CAMPAIGN FINANCE LAWS; REQUIRING
5 NOTIFICATION OF THE CANDIDATE UNDER CERTAIN CIRCUMSTANCES; LIMITING THE
6 COMMISSIONER'S INVESTIGATION POWER UNDER CERTAIN CIRCUMSTANCES; MODIFYING
7 REPORTING REQUIREMENTS FOR CERTAIN PERSONS; AND AMENDING SECTIONS 13-37-111,
8 13-37-121, 13-37-123, 13-37-124, AND 13-37-229, MCA."

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

11

12 NEW SECTION. **Section 1. Notification of candidate required -- exception.** (1) If a candidate or the
13 candidate's treasurer is the subject of a potential order of noncompliance or the subject of a complaint filed
14 pursuant to chapter 35 of this title or this chapter, the commissioner may not issue a sufficiency finding or an
15 order of noncompliance except as provided in this section.

16 (2) At least 10 days before issuing the order of noncompliance under 13-37-121 or at least 10 days
17 before issuing a determination that there is sufficient evidence to justify a civil or criminal prosecution as provided
18 in 13-37-124, the commissioner shall notify the candidate at the candidate's mailing address by certified mail,
19 return receipt requested, that the commissioner is preparing to issue a sufficiency finding or a potential order of
20 noncompliance.

21 (3) If the commissioner does not receive evidence of delivery of the notice sent under subsection (2),
22 the commissioner shall send the candidate a duplicate notice by certified mail, return receipt requested, at least
23 10 days after the first notice was sent.

24 (4) If the commissioner receives evidence of successful delivery pursuant to the return receipt under
25 subsection (1) or (2), the commissioner may issue the sufficiency finding or order of noncompliance at least 10
26 days after the candidate was notified.

27 (5) If, after attempting to contact the candidate as provided in subsections (2) and (3), the commissioner
28 is unable to contact the candidate and 30 days have passed from the date of mailing of the initial notification
29 attempt under subsection (1), the commissioner may issue the sufficiency finding or the order of noncompliance.

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1 **Section 2.** Section 13-37-111, MCA, is amended to read:

2 **"13-37-111. Investigative powers and duties -- recusal.** (1) Except as provided in 13-35-240 and this
3 section, the commissioner is responsible for investigating all of the alleged violations of the election laws
4 contained in chapter 35 of this title or this chapter and in conjunction with the county attorneys is responsible for
5 enforcing these election laws.

6 (2) The commissioner may:

7 (a) investigate all statements filed pursuant to the provisions of chapter 35 of this title or this chapter and
8 shall investigate alleged failures to file any statement or the alleged falsification of any statement filed pursuant
9 to the provisions of chapter 35 of this title or this chapter. ~~Upon the submission of a written complaint by any~~
10 ~~individual, the commissioner shall investigate any other alleged violation of the provisions of chapter 35 of this~~
11 ~~title, this chapter, or any rule adopted pursuant to chapter 35 of this title or this chapter. The scope of the~~
12 ~~investigation must be limited to the allegations contained within the complaint.~~

13 (b) inspect any records, accounts, or books that must be kept pursuant to the provisions of chapter 35
14 of this title or this chapter that are held by any political committee or candidate, as long as the inspection is made
15 during reasonable office hours; and

16 (c) administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and
17 require the production of any books, papers, correspondence, memoranda, bank account statements of a political
18 committee or candidate, or other records that are relevant or material for the purpose of conducting any
19 investigation pursuant to the provisions of chapter 35 of this title or this chapter.

20 (3) If the commissioner determines that considering a matter would give rise to the appearance of
21 impropriety or a conflict of interest, the commissioner is recused from participating in the matter.

22 (4) The commissioner is recused from participating in any decision in which the commissioner is accused
23 of violating 13-37-108 or any other ethical standard.

24 (5) (a) If a campaign finance or ethics complaint is filed in the office of the commissioner against the
25 commissioner, a supervisor within the commissioner's office shall within 10 business days forward the complaint
26 to the attorney general, who shall within 45 days appoint a deputy in the case of a finance complaint or a deputy
27 and a hearings officer in the case of an ethics complaint to make a determination in the matter of the complaint.
28 The attorney general shall, to the extent practicable, ensure that there is no conflict of interest in the appointment
29 of the deputy or hearings officer or in the provision of any legal advice to the office of the commissioner.

30 (b) A deputy appointed pursuant to this subsection must, in addition to complying with the requirements

1 of subsection (6)(b), be an attorney licensed to practice law in Montana who is engaged in the private practice
2 of law and who has liability insurance applicable to the purposes for which the deputy is appointed.

3 (c) If a complaint is filed against the commissioner, another employee in the office of the commissioner
4 may not provide the commissioner with any information or documents concerning a complaint against the
5 commissioner beyond that information or those documents normally provided to persons in matters before the
6 commissioner.

7 (6) (a) If the commissioner is recused pursuant to this section, the commissioner shall, except as
8 provided in subsection (5), appoint a deputy, subject to subsection (6)(b).

9 (b) The deputy:

10 (i) may not be an employee of the office of the commissioner;

11 (ii) must have the same qualifications as specified for the commissioner in 13-37-107;

12 (iii) with respect to only the specific matter from which the commissioner is recused, has the same
13 authority, duties, and responsibilities as the commissioner would have absent the recusal; and

14 (iv) may not exercise any powers of the office that are not specifically related to the matter for which the
15 deputy is appointed.

16 (7) (a) Except as provided in subsection (7)(b), the appointment of the deputy is effectuated by a contract
17 between the commissioner and the deputy. A contract executed pursuant to this subsection (7) must specify the
18 deputy's term of appointment, which must be temporary, the matter assigned to the deputy, the date on which
19 the matter assigned must be concluded by the deputy, and any other items relevant to the deputy's appointment,
20 powers, or duties.

21 (b) If a deputy is appointed pursuant to subsection (5), the appointment of the deputy is effectuated by
22 a contract between the supervisor who forwarded the complaint to the attorney general and the deputy or the
23 deputy and the hearings officer, but the contract is construed to be with the office of the commissioner."
24

25 **Section 3.** Section 13-37-121, MCA, is amended to read:

26 **"13-37-121. Inspection of statements and reports -- issuance of orders of noncompliance.** (1) Each
27 statement and report filed with the commissioner during an election or within 60 days after the election must be
28 inspected within 20 days after the statement or report is filed. Intermediate Saturdays, Sundays, and holidays
29 must be excluded in the computation of time under this section. If a person has not satisfied the provisions of this
30 chapter, the commissioner shall immediately notify the person of the noncompliance. Notification by the

1 commissioner may be accomplished by written or electronic communication or by telephone. However, if the
 2 noncompliance is by a candidate, including noncompliance by the candidate's treasurer, the treasurer must be
 3 notified as provided in this section, and the candidate must be notified as provided in [section 1]. If the person
 4 fails to comply after the notification, the commissioner shall issue an order of noncompliance as provided in this
 5 section.

6 (2) An order of noncompliance may be issued when:

7 (a) upon examination of the official ballot, it appears that the person has failed to file a statement or
 8 report as required by this chapter or that a statement or report filed by a person does not conform to law; or

9 (b) it is determined that a statement or report filed with the commissioner does not conform to the
 10 requirements of this chapter or that a person has failed to file a statement or report required by law.

11 (3) If an order of noncompliance is issued during a campaign period or within 60 days after an election,
 12 a candidate or political committee shall submit the necessary information within 5 days after receiving the order
 13 of noncompliance. Upon a failure to submit the required information within the time specified, the appropriate
 14 county attorney or the commissioner may initiate a civil or criminal action pursuant to the procedures outlined in
 15 13-37-124 and 13-37-125.

16 (4) If an order of noncompliance is issued during any period other than that described in subsection (3),
 17 a candidate or political committee shall submit the necessary information within 10 days after receiving the order
 18 of noncompliance. Upon a failure to submit the required information within the time specified, the appropriate
 19 county attorney or the commissioner shall initiate a civil or criminal action pursuant to the procedures outlined
 20 in 13-37-124 and 13-37-125.

21 (5) After a complaint is filed with the commissioner pursuant to 13-37-111, the procedure described in
 22 this section regarding the provision of notice and issuance of orders of noncompliance is not a prerequisite to
 23 initiation of any other administrative or judicial action authorized under chapter 35 of this title or this chapter."
 24

25 **Section 4.** Section 13-37-123, MCA, is amended to read:

26 **"13-37-123. Examination of reports after election.** Within 120 days after the date of each election,
 27 the commissioner shall examine and compare each statement or report filed with the commissioner pursuant to
 28 the provisions of this chapter to determine whether the statement or report conforms to the provisions of the law.
 29 The examination shall include a comparison of all reports and statements received by the commissioner pursuant
 30 to the requirements of this chapter. The If the investigation is instigated by the inspection required in this section

1 and commenced pursuant to the timeline specified in this section, the commissioner may investigate the source
 2 and authenticity of ~~any a~~ contribution or expenditure listed in ~~any a~~ report or statement filed pursuant to this
 3 chapter or the alleged failure to report ~~any a~~ contribution or expenditure required to be reported pursuant to this
 4 chapter."

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6 **Section 5.** Section 13-37-124, MCA, is amended to read:

7 **"13-37-124. Consultation and cooperation with county attorney.** (1) Except as provided in
 8 13-35-240, whenever the commissioner determines that there appears to be sufficient evidence to justify a civil
 9 or criminal prosecution under chapter 35 of this title or this chapter and after the commissioner has notified the
 10 relevant candidate, if any, pursuant to [section 1], the commissioner shall notify the county attorney of the county
 11 in which the alleged violation occurred and shall arrange to transmit to the county attorney all information relevant
 12 to the alleged violation. If the county attorney fails to initiate the appropriate civil or criminal action within 30 days
 13 after receiving notification of the alleged violation, the commissioner may then initiate the appropriate legal action.

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

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

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

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24 **Section 6.** Section 13-37-229, MCA, is amended to read:

25 **"13-37-229. Disclosure requirements for candidates, ballot issue committees, political party**
 26 **committees, and independent committees.** (1) The reports required under 13-37-225 through 13-37-227 from
 27 candidates, ballot issue committees, political party committees, and independent committees must disclose the
 28 following information concerning contributions received:

29 (a) the amount of cash on hand at the beginning of the reporting period;

30 (b) ~~the full name, mailing address, occupation, and employer, if any, of~~ for each person who has made

- 1 aggregate contributions, other than loans, ~~of \$35 or more~~ to a candidate or political committee, including the
2 purchase of tickets and other items for events, such as dinners, luncheons, rallies, and similar fundraising events;
3 (i) of \$35 or more but less than \$100, the person's full name and mailing address; and
4 (ii) of \$100 or more, the person's full name, mailing address, occupation, and employer, if any;
5 (c) for each person identified under subsection (1)(b), the aggregate amount of contributions made by
6 that person within the reporting period and the total amount of contributions made by that person for all reporting
7 periods;
8 (d) the total sum of individual contributions made to or for a political committee or candidate and not
9 reported under subsections (1)(b) and (1)(c);
10 (e) the name and address of each political committee or candidate from which the reporting committee
11 or candidate received any transfer of funds, together with the amount and dates of all transfers;
12 (f) each loan from any person during the reporting period, together with the full names, mailing
13 addresses, occupations, and employers, if any, of the lender and endorsers, if any, and the date and amount of
14 each loan;
15 (g) the amount and nature of debts and obligations owed to a political committee or candidate, in the
16 form prescribed by the commissioner;
17 (h) an itemized account of proceeds that total less than \$35 from a person from mass collections made
18 at fundraising events;
19 (i) each contribution, rebate, refund, or other receipt not otherwise listed under subsections (1)(b) through
20 (1)(h) during the reporting period;
21 (j) the total sum of all receipts received by or for the committee or candidate during the reporting period;
22 and
23 (k) other information that may be required by the commissioner to fully disclose the sources of funds
24 used to support or oppose candidates or issues.
25 (2) (a) Except as provided in subsection (2)(c), the reports required under 13-37-225 through 13-37-227
26 from candidates, ballot issue committees, political party committees, and independent committees must disclose
27 the following information concerning expenditures made:
28 (i) the full name, mailing address, occupation, and principal place of business, if any, of each person to
29 whom expenditures have been made by the committee or candidate during the reporting period, including the
30 amount, date, and purpose of each expenditure and the total amount of expenditures made to each person;

1 (ii) the full name, mailing address, occupation, and principal place of business, if any, of each person to
2 whom an expenditure for personal services, salaries, and reimbursed expenses has been made, including the
3 amount, date, and purpose of that expenditure and the total amount of expenditures made to each person;

4 (iii) the total sum of expenditures made by a political committee or candidate during the reporting period;

5 (iv) the name and address of each political committee or candidate to which the reporting committee or
6 candidate made any transfer of funds, together with the amount and dates of all transfers;

7 (v) the name of any person to whom a loan was made during the reporting period, including the full
8 name, mailing address, occupation, and principal place of business, if any, of that person and the full names,
9 mailing addresses, occupations, and principal places of business, if any, of the endorsers, if any, and the date
10 and amount of each loan;

11 (vi) the amount and nature of debts and obligations owed by a political committee or candidate in the form
12 prescribed by the commissioner; and

13 (vii) other information that may be required by the commissioner to fully disclose the disposition of funds
14 used to support or oppose candidates or issues.

15 (b) Reports of expenditures made to a consultant, advertising agency, polling firm, or other person that
16 performs services for or on behalf of a candidate or political committee must be itemized and described in
17 sufficient detail to disclose the specific services performed by the entity to which payment or reimbursement was
18 made.

19 (c) A candidate is required to report the information specified in this subsection (2) only if the transactions
20 involved were undertaken for the purpose of supporting or opposing a candidate."

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22 **NEW SECTION. Section 7. Codification instruction.** [Section 1] is intended to be codified as an
23 integral part of Title 13, chapter 37, part 1, and the provisions of Title 13, chapter 37, part 1, apply to [section 1].

24 - END -