

HOUSE BILL NO. 535

INTRODUCED BY TOOLE, B. BROWN, BARDANOUVE, ELLIOTT,
TOWE, BARNHART, LEE, DAVIS, SVRCEK, FRITZ, SCHYE,
RUSSELL, KIMBERLEY, MADISON, S. RICE, DOWELL,
HARPER, REAM, RYE

IN THE HOUSE

FEBRUARY 1, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON STATE ADMINISTRATION.

 FIRST READING.

FEBRUARY 20, 1991 ON MOTION, REREFERRED TO COMMITTEE
ON STATE ADMINISTRATION.

FEBRUARY 22, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 23, 1991 PRINTING REPORT.

FEBRUARY 25, 1991 SECOND READING, DO PASS.

 ENGROSSING REPORT.

FEBRUARY 26, 1991 THIRD READING, PASSED.
AYES, 55; NOES, 45.

 TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 26, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON STATE ADMINISTRATION.

 FIRST READING.

MARCH 21, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 23, 1991 SECOND READING, CONCURRED IN.

MARCH 25, 1991 THIRD READING, CONCURRED IN.
AYES, 37; NOES, 11.

 RETURNED TO HOUSE.

IN THE HOUSE

MARCH 25, 1991 RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *House* BILL NO. 535
 2 INTRODUCED BY *Bob Brown, Barbara...*
 3 *BBambatt, Lea Davis, Sarah...*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR CITIZEN
 5 ENFORCEMENT OF ELECTION AND CAMPAIGN PRACTICES LAWS AND
 6 AMENDING SECTIONS 13-37-128 AND 13-37-129, MCA."
 7
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 **Section 1.** Section 13-37-128, MCA, is amended to read:
 10 **"13-37-128. Cause--of--action--created Penalties and**
 11 **enforcement.** (1) Except as provided in 13-37-306, any person
 12 who intentionally or negligently violates any of the
 13 reporting provisions of this chapter, shall be liable in a
 14 civil action brought by the commissioner or a county
 15 attorney pursuant to the provisions outlined in 13-37-124
 16 and 13-37-125 or by a citizen pursuant to the provisions of
 17 subsection (3) for an amount up to \$500 or three times the
 18 amount of the unlawful contributions or expenditures,
 19 whichever is greater.
 20 (2) Any person who makes or receives a contribution or
 21 expenditure in violation of 13-35-225, 13-35-227, 13-35-228,
 22 or this chapter, is liable in a civil action brought by the
 23 commissioner or a county attorney pursuant to the provisions
 24 outlined in 13-37-124 and 13-37-125 or by a citizen pursuant
 25 to the provisions of subsection (3) for an amount up to \$500

1 or three times the amount of the unlawful contribution or
 2 expenditure, whichever is greater.
 3 (3) (a) An individual who has notified the
 4 commissioner, the attorney general, and the appropriate
 5 county attorney in writing that there is reason to believe
 6 that the provisions referred to in subsection (1) or (2) are
 7 being violated may bring an action, referred to as a
 8 citizen's action, in the name of the state if:
 9 (i) the attorney general and the appropriate county
 10 attorney have failed to commence an action within 40 days
 11 after notice; and
 12 (ii) the attorney general or county attorney fails to
 13 commence an action within 10 days after receipt of a written
 14 notice advising him that a citizen's action will be brought
 15 if he does not bring an action.
 16 (b) Each notification tolls the applicable statute of
 17 limitations until the expiration of the waiting period.
 18 (c) If the individual who brings the citizen's action
 19 prevails, he is entitled to be reimbursed by the state for
 20 costs and attorney fees incurred, provided that in the case
 21 of a citizen's action that is dismissed and that the court
 22 finds was brought without reasonable cause, the court may
 23 order the individual commencing the action to pay all costs
 24 of trial and reasonable attorney fees incurred by the
 25 defendant."



LC 0687/01

1 **Section 2.** Section 13-37-129, MCA, is amended to read:

2 "13-37-129. **Liability and disposition of fines.** In
3 determining the amount of liability under 13-37-128, the
4 court may take into account the seriousness of a violation
5 and the degree of culpability of the defendant. If a
6 judgment is entered against the defendant or defendants in
7 an action brought by a county attorney in a court other than
8 a justice's court, the county shall receive 50% of the
9 amount recovered. The remaining 50% shall be deposited in
10 the general fund of the state. In an action brought by the
11 commissioner or a citizen in a court other than a justice's
12 court, the entire amount recovered shall be paid to the
13 general fund of the state."

-End-

APPROVED BY COMMITTEE
ON STATE ADMINISTRATION

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR CITIZEN
ENFORCEMENT OF ELECTION AND CAMPAIGN PRACTICES LAWS; AND
AMENDING SECTIONS 13-37-128 AND 13-37-129, MCA."

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

Section 1. Section 13-37-128, MCA, is amended to read:

"13-37-128. Cause-of-action-created Penalties and enforcement. (1) Except as provided in 13-37-306, any person who intentionally or negligently violates any of the reporting provisions of this chapter, shall be liable in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 or by a citizen pursuant to the provisions of subsection (3) for an amount up to \$500 or three times the amount of the unlawful contributions or expenditures, whichever is greater.

(2) Any person who makes or receives a contribution or expenditure in violation of 13-35-225, 13-35-227, 13-35-228, or this chapter, is liable in a civil action brought by the

commissioner or a county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 or by a citizen pursuant to the provisions of subsection (3) for an amount up to \$500 or three times the amount of the unlawful contribution or expenditure, whichever is greater.

(3) (a) An individual who has notified the commissioner, the attorney general, and the appropriate county attorney in writing that there is reason to believe that the provisions referred to in subsection (1) or (2) are being violated may bring an action, referred to as a citizen's action, in the name of the state if:

(i) the attorney general and the appropriate county attorney have failed to commence an action within 40 days after notice; and

(ii) the attorney general or county attorney fails to commence an action within 10 days after receipt of a written notice advising him that a citizen's action will be brought if he does not bring an action; THE COMMISSIONER OR THE APPROPRIATE COUNTY ATTORNEY HAS FAILED TO EITHER COMMENCE AN ACTION OR DISMISS THE COMPLAINT BY WRITTEN NOTIFICATION TO THE COMPLAINANT WITHIN 50 DAYS AFTER NOTICE.

(b) Each notification tolls the applicable statute of limitations until the expiration of the waiting period.

(c) If the individual who brings the citizen's action prevails, he is entitled to be reimbursed by the state for



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1 costs and attorney fees incurred, provided that in the case
2 of a citizen's action that is dismissed and that the court
3 finds was brought without reasonable cause, the court may
4 SHALL order the individual commencing the action to pay all
5 costs of trial and reasonable attorney fees incurred by the
6 defendant."

7 **Section 2.** Section 13-37-129, MCA, is amended to read:

8 "13-37-129. Liability and disposition of fines. In
9 determining the amount of liability under 13-37-128, the
10 court may take into account the seriousness of a violation
11 and the degree of culpability of the defendant. If a
12 judgment is entered against the defendant or defendants in
13 an action brought by a county attorney in a court other than
14 a justice's court, the county shall receive 50% of the
15 amount recovered. The remaining 50% shall be deposited in
16 the general fund of the state. In an action brought by the
17 commissioner or a citizen in a court other than a justice's
18 court, the entire amount recovered shall be paid to the
19 general fund of the state."

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and 13-37-125 or by a citizen pursuant to the provisions of
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~~ACTION OR DISMISS THE COMPLAINT BY WRITTEN NOTIFICATION TO~~
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(b) Each notification tolls the applicable statute of
limitations until the expiration of the waiting period.

(c) If the individual who brings the citizen's action
prevails, he is entitled to be reimbursed by the state for

1 costs and attorney fees incurred, provided that in the case
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-End-



State of Montana
Office of the Governor
Helena, Montana 59620
406-444-3111

STAN STEPHENS
GOVERNOR

April 6, 1991

The Honorable Hal Harper
Speaker
House of Representatives
State Capitol
Helena, Montana 59620

The Honorable Joseph P. Mazurek
President
Montana State Senate
State Capitol
Helena, Montana 59620

Dear Speaker Harper and President Mazurek:

In accordance with the power vested in me as Governor by the Constitution and laws of the State of Montana, I hereby veto the adoption of House Bill 535, "AN ACT PROVIDING FOR CITIZEN ENFORCEMENT OF ELECTION AND CAMPAIGN PRACTICES LAWS; AND AMENDING SECTIONS 13-37-128 AND 13-37-129, MCA."

House Bill 535 degrades the civil and criminal prosecution system that has been elaborately maintained to enforce election and campaign laws in this state. To empower a private citizen to enforce campaign practice laws on behalf of this state is notable and fills the legislative halls with inexpensive political rhetoric that transcends the reality of the real motive behind this legislation.

Presently, the commissioner of campaign practices, the attorney general and the respective elected county attorneys of this state are empowered to enforce the law and to seek and prosecute election and campaign practice violations. These individuals are trained professional prosecutors, two of which are directly accountable to the people through the election process. This legislation is clearly suggesting that there is no faith in the ability and integrity of the commissioner, the Attorney General or 56 respective county attorneys.

Public service through election to various positions of responsibility is the highest honor bestowed upon an individual by local, county or state government. Public service also requires great sacrifices to the individual and their family who seek public office. This bill, in its present form, would provide another political tool to irresponsible individuals to harass and use the judicial system for purely political purposes. Many fine potential individuals will be dissuaded from entering into public life if they realize that an individual may pursue a prosecution for allegations that are not substantiated during and after the election.

The legislation, as presented, will relieve the responsibilities of the commissioner of political practices, the attorney general and the county attorneys to promptly and responsibly resolve allegations of campaign election law violations. These public officers must execute the responsibilities of their office and either prosecute or dismiss the complaint based on the merit of the complaint and the facts. They have the proper investigatory power and are accountable to their constituents.

To allow a private citizen the opportunity to second-guess or alternatively prosecute alleged violations of campaign practices makes about as much sense as allowing a private citizen to criminally prosecute an individual for an alleged crime, whether it be assault or robbery, when the county has determined there is no merit to the case. Vigilante justice should remain in our history books, not our law books.

I, therefore, veto House Bill 535. It is bad legislation. It degrades the integrity of the commissioner of political practices, attorney general and the county attorneys. It satisfies no demonstrated public policy concern and it invites political deviance at the expense of the public trust and public money.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stan Stephens".

STAN STEPHENS
Governor