

1 Senate BILL NO. 202
 2 INTRODUCED BY Gov. Fashbender Phil Turnage
 3 Brown Foster

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR
 5 PREPUBLICATION NOTICE TO A CANDIDATE CRITICIZED IN A
 6 PREELECTION ADVERTISEMENT BY THE SPONSOR OF THE
 7 ADVERTISEMENT AND MEDIUM CARRYING THE ADVERTISEMENT AND
 8 PROVIDING PENALTIES."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Candidates to be notified in advance of
 12 critical advertisements. A person who intends to publish or
 13 distribute by handbill, newspaper, or electronic medium, an
 14 advertisement critical of a candidate shall submit the
 15 content of the proposed advertisement to the candidate not
 16 less than ten (10) days prior to the election involved.

17 Section 2. Communications medium to notify candidate
 18 prior to publication of critical advertising. A
 19 communications medium that accepts an advertisement critical
 20 of a candidate shall notify the candidate criticized prior
 21 to the publication of that advertisement. A communications
 22 medium that publishes an advertisement critical of a
 23 candidate shall afford that candidate the opportunity to
 24 respond in a location of a printed medium or time on an
 25 electronic medium that is reasonably comparable to the

1 publication of the original advertisement.

2 Section 3. Presumption of malice -- when presumed. If
 3 the information contained in an advertisement involved in a
 4 violation of this act is false, it is presumed the
 5 advertisement was published with malice.

6 Section 4. Violation by candidate voids election. A
 7 candidate who violates this act or who knows in advance of
 8 publication of a violation of this act by another person
 9 over whom he could exercise sufficient control to prevent
 10 the violation shall upon a finding to this effect by the
 11 district court be removed from the nomination or public
 12 office to which he was elected provided that the
 13 advertisement involved in the violation was false or highly
 14 misleading and sufficiently material to have had a
 15 reasonable possibility of producing a different vote by a
 16 substantial number of electors.

17 Section 5. Publishers and electronic communications
 18 medium managers -- penalties for violations. A publisher or
 19 electronic communications medium manager or any employee of
 20 either who violates this act shall be fined not less than
 21 one thousand dollars (\$1,000) and not to exceed ten thousand
 22 dollars (\$10,000).

-End-

Reported back from Committee without recommendation, as amended.

1 SENATE BILL NO. 202

2 INTRODUCED BY TOWE, FASBENDER, REGAN,

3 TURNAGE, BROWN, FOSTER

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR
6 PREPUBLICATION NOTICE TO A CANDIDATE ~~CRITICIZED~~ MENTIONED IN
7 A PREELECTION ADVERTISEMENT BY THE SPONSOR OF THE
8 ADVERTISEMENT AND MEDIUM CARRYING THE ADVERTISEMENT AND
9 PROVIDING PENALTIES."

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

12 Section 1. Candidates to be notified in advance of
13 ~~critical~~ advertisements. A person who intends to publish or
14 distribute by handbill, newspaper, or electronic medium, an
15 advertisement ~~critical~~ CONCERNING THE VOTING RECORD of a
16 candidate shall submit the content of the proposed
17 advertisement to the candidate not less than ~~ten--(10)~~ FIVE
18 (5) days prior to the election involved.

19 Section 2. Communications medium to notify candidate
20 prior to publication of ~~critical~~ advertising. A
21 communications medium that accepts an advertisement ~~critical~~
22 CONCERNING THE VOTING RECORD of a candidate shall notify the
23 candidate ~~criticized~~ prior to the publication of that
24 advertisement IN SUFFICIENT TIME TO AFFORD SAID CANDIDATE AN
25 OPPORTUNITY TO RESPOND BEFORE THE ELECTION. A

1 communications medium that publishes an advertisement
2 ~~critical~~ CONCERNING THE VOTING RECORD of a candidate shall
3 afford that candidate the opportunity to respond AT THE
4 CANDIDATE'S EXPENSE in a location of a printed medium or
5 time on an electronic medium that is reasonably comparable
6 to the publication of the original advertisement.

7 ~~Section 3. Presumption of malice --- when presumed --- if~~
8 ~~the information contained in an advertisement involved in a~~
9 ~~violation --- of this act is false, it is presumed the~~
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12 candidate who violates this act or who knows in advance of
13 publication of a violation of this act by another person
14 over whom he could exercise sufficient control to prevent
15 the violation shall upon a finding to this effect by the
16 district court be removed from the nomination or public
17 office to which he was elected provided that the
18 advertisement involved in the violation was false ~~or highly~~
19 ~~misleading~~ and sufficiently material to have had a
20 reasonable possibility of producing a different vote by a
21 substantial number of electors.

22 Section 4. Publishers and electronic communications
23 medium managers -- penalties for violations. A publisher or
24 electronic communications medium manager or any employee of
25 either who violates this act shall be fined not less than

1 one ~~thousand~~ HUNDRED dollars ~~{~~\$1,000~~}~~ (\$100) and not to
2 exceed ~~ten~~ ONE thousand dollars ~~{~~\$10,000~~}~~ (\$1,000).

3 SECTION 5. NOTIFICATION OF CANDIDATE. FOR THE
4 PURPOSES OF THIS ACT, THE MAILING OF A COPY OF THE PROPOSED
5 ADVERTISEMENT OR THE SCRIPT OF THE ADVERTISEMENT ALONG WITH
6 NOTICE OF THE TIME AND PLACE WHERE THE ADVERTISEMENT WILL BE
7 PUBLISHED, AIRED OR DISTRIBUTED, TO THE LAST KNOWN ADDRESS
8 OF THE CANDIDATE WITHIN THE TIME SET FORTH IN THIS ACT SHALL
9 CONSTITUTE COMPLIANCE.

10 SECTION 6. LIMITATIONS OF ACT. TO THE EXTENT THAT
11 THIS ACT IS IN CONFLICT WITH OR IS SUPERCEDED BY PARAGRAPH
12 315 OF THE FEDERAL COMMUNICATIONS ACT, IT SHALL BE
13 INEFFECTIVE.

14 SECTION 7. SEVERABILITY. IF A PART OF THIS ACT IS
15 INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID
16 PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN
17 ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT
18 IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE
19 INVALID APPLICATIONS.

-End-

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 2 INTRODUCED BY TOWE, FASBENDER, REGAN,
 3 TURNAGE, BROWN, FOSTER
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 6 PREPUBLICATION NOTICE TO A CANDIDATE ~~CRITICIZED~~ MENTIONED IN
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 8 ADVERTISEMENT AND MEDIUM CARRYING THE ADVERTISEMENT AND
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 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Candidates to be notified in advance of
 13 ~~critical~~ advertisements. A person OR ORGANIZATION who
 14 intends to publish or distribute by handbill, newspaper, or
 15 electronic medium, an advertisement ~~critical~~ CONCERNING THE
 16 VOTING RECORD of a candidate shall submit the content of the
 17 proposed advertisement to the candidate not less than ~~ten~~
 18 ~~{10}~~ FIVE (5) days prior to the election involved.

19 Section 2. Communications medium to notify candidate
 20 prior to publication of ~~critical~~ advertising. A
 21 communications medium that accepts an advertisement ~~critical~~
 22 CONCERNING THE VOTING RECORD of a candidate shall notify the
 23 candidate ~~criticized~~ prior to the publication of that
 24 advertisement IN SUFFICIENT TIME TO AFFORD SAID CANDIDATE AN
 25 OPPORTUNITY TO RESPOND BEFORE THE ELECTION. A

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 4 CANDIDATE'S EXPENSE in a location of a printed medium or
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 6 to the publication of the original advertisement.

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 9 ~~violation --- of --- this --- act --- is --- false, --- it --- is --- presumed --- the~~
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 12 candidate who violates this act or who knows in advance of
 13 publication of a violation of this act by another person
 14 over whom he could exercise sufficient control to prevent
 15 the violation shall upon a finding to this effect by the
 16 district court be removed from the nomination or public
 17 office to which he was elected provided that the
 18 advertisement involved in the violation was false ~~or highly~~
 19 ~~misleading~~ and sufficiently material to have had a
 20 reasonable possibility of producing a different vote by a
 21 substantial number of electors.

22 Section 4. Publishers and electronic communications
 23 medium managers -- penalties for violations. A publisher or
 24 electronic communications medium manager or any employee of
 25 either, PERSON OR ORGANIZATION who violates this act shall

1 be fined not less than one ~~thousand~~ HUNDRED dollars ~~(~~\$1,000~~)~~
2 (\$100) and not to exceed ~~ten~~ ONE thousand dollars ~~(~~\$10,000~~)~~
3 (\$1,000).

4 SECTION 5. NOTIFICATION OF CANDIDATE. FOR THE
5 PURPOSES OF THIS ACT, THE MAILING OF A COPY OF THE PROPOSED
6 ADVERTISEMENT OR THE SCRIPT OF THE ADVERTISEMENT ALONG WITH
7 NOTICE OF THE TIME AND PLACE WHERE THE ADVERTISEMENT WILL BE
8 PUBLISHED, AIRED OR DISTRIBUTED, TO THE LAST KNOWN ADDRESS
9 OF THE CANDIDATE WITHIN THE TIME SET FORTH IN THIS ACT SHALL
10 CONSTITUTE COMPLIANCE.

11 SECTION 6. NOTHING IN THIS ACT SHALL BE CONSTRUED TO
12 PROHIBIT ANY COMMUNICATIONS MEDIUM FROM COMMENTING ON THE
13 VOTING RECORD OF A CANDIDATE IN AN EDITORIAL, NEWS STORY OR
14 ANY OTHER NON-ADVERTISING MESSAGE.

15 SECTION 7. LIMITATIONS OF ACT. TO THE EXTENT THAT
16 THIS ACT IS IN CONFLICT WITH OR IS SUPERCEDED BY PARAGRAPH
17 315 OF THE FEDERAL COMMUNICATIONS ACT, IT SHALL BE
18 INEFFECTIVE.

19 SECTION 8. SEVERABILITY. IF A PART OF THIS ACT IS
20 INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID
21 PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN
22 ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT
23 IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE
24 INVALID APPLICATIONS.

-End-

COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL NO. 202

Be amended in the third reading bill as follows:

1. Amend page 1, section 1, line 18.

Following: "~~10~~"

Strike: "FIVE (5)"

Insert: "ten (10)"

2. Amend page 2, section 3, line 18.

Following: "false"

Strike: "or"

Insert: "or intentionally"

3. Amend page 2, section 3, line 19.

Strike: "~~misleading~~"

Insert: "misleading"

AS SO AMENDED BE CONCURRED IN