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SENATE BILL NO. 300

Molner

INTRODUCED BY

Kevin Duke
Forbes Estrada

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CAMPAIGN PRACTICES; REQUIRING ADHERENCE TO THE CODE OF FAIR CAMPAIGN PRACTICES; PROVIDING A PROCEDURE FOR FILING A COMPLAINT; PROVIDING SANCTIONS FOR CAMPAIGN VIOLATIONS; IMPOSING CIVIL FINES FOR CERTAIN VIOLATIONS; PROVIDING INJUNCTIVE RELIEF FOR SUCCESSIVE KNOWING VIOLATIONS; AND AMENDING SECTION 13-35-302, MCA."

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

NEW SECTION. **Section 1. Complaint procedure -- filing fee.** (1) A person may file a complaint with the commissioner alleging a violation of Title 13, chapter 35 or 36, or this chapter. Each complaint must be based on a separate violation. Multiple statements in a piece of campaign literature are a single violation. Documents and material supporting the complaint must be filed with the complaint. Each complaint must be accompanied by a \$100 filing fee. The fee must be deposited in an account in the state special revenue fund to be used by the commissioner for the administrative costs of processing complaints.

(2) Upon receipt of a complaint accompanied by the filing fee, the commissioner shall notify the party against whom the complaint has been filed by telephone and by certified mail. If campaign literature is involved in the complaint, the commissioner shall, if a prima facie violation is stated in the complaint, order the party to cease distributing the literature until a decision is made. The commissioner shall render a decision and take any appropriate disciplinary action within 2 calendar days after the complaint is properly filed.

Section 2. Section 13-35-302, MCA, is amended to read:

"13-35-302. Candidates to be given opportunity to subscribe to -- campaign practices code. (1) The commissioner of political practices shall prepare a form that sets forth the code of fair campaign practices provided for in 13-35-301 and a place for a candidate to sign the form and to indicate that the candidate endorses, subscribes to, and pledges to abide by the code.

(2) The commissioner shall send a copy of the form to each candidate required to file reports or

1 other information with the commissioner. Signing the form is ~~voluntary~~ mandatory, and a failure or refusal
2 to sign is ~~not a violation of the election laws~~ questionable practice under [section 3]. A form must be sent
3 for each election as soon as feasible. The signed form must be returned to the commissioner.

4 (3) Any candidate not required to file with the commissioner but wishing to subscribe to the code
5 may obtain the form from the commissioner and may sign the form and deliver it to the commissioner."
6

7 **NEW SECTION. Section 3. Questionable practices.** (1) A violation of 13-35-301 may be charged
8 by a complaint filed pursuant to [section 1]. If the commissioner of political practices determines that a
9 violation of 13-35-301 has occurred, the commissioner shall order the candidate to make a public retraction
10 of a statement, discontinue the use of literature, and pay a civil fine of \$500 for a first offense and \$1,000
11 for each succeeding offense. If a complaint filed pursuant to [section 1] is determined to be
12 unsubstantiated or frivolous, the fine under this subsection must be imposed on the person filing the
13 complaint.

14 (2) If the commissioner determines that a violation was knowingly false or misleading, the
15 commissioner shall impose a civil fine of \$5,000 for a first offense and for a second offense shall impose
16 a civil fine of \$5,000 and file a complaint with any district court. Upon filing of the complaint, the judge
17 shall issue a writ of injunction restraining the officer whose duty it is to prepare official ballots from placing
18 the name of the person on the ballot as a candidate for that office if the judge is convinced that a second
19 knowing violation of 13-35-301 has occurred.

20 (3) (a) An individual or group making statements or distributing literature on behalf of a candidate
21 or in opposition to a candidate's opponent is subject to the civil fines set out in subsections (1) and (2).

22 (b) A fine may not be paid with campaign contributions.

23 (4) (a) Except as provided in subsection (4)(b), civil fines under this section must be deposited in
24 the state special revenue account provided for in [section 1].

25 (b) If a fine is imposed pursuant to this section, the person filing a complaint must be reimbursed
26 for the filing fee required under [section 1].
27

28 **NEW SECTION. Section 4. Codification instructions.** (1) [Section 1] is intended to be codified as
29 an integral part of Title 13, chapter 37, part 1, and the provisions of Title 13, chapter 37, part 1, apply to
30 [section 1].

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0300, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising campaign practices by requiring adherence to the Code of Fair Campaign Practices, and providing a procedure for filing a complaint.

ASSUMPTIONS:

1. The code of fair campaign practices would have to be re-written to remove its subjectivity, and lend itself to enforcement by the assessment of civil penalties.
2. In 1994, 30 formal and numerous informal complaints were made with the Commissioner. About 50 formal complaints are likely to be filed in a campaign year, with 10 of these being assessed a civil fine of \$500. Thus, total new revenue of \$10,000 would be received in the biennium, with half received each year.
3. The Commissioner of Political Practices would require 1.00 new FTE to re-write the code and administer the complaints. Two people (attorney, grade 18; secretary, grade 9) would work 12 continuous months of the even numbered calendar years. Operating expenses would be \$6,000 per year and equipment (office furniture and PC) for 2 people would be \$8,000 in FY96. In addition, investigation expenses for the 50 complaints would be contracted at a cost of \$32,000 (50 complaints x 20 hours x \$32) per biennium.
4. The general fund would support costs of the program that exceed the new revenue in the state special revenue account.

FISCAL IMPACT:

Expenditures:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
FTE	1.00	1.00
Personal services	32,500	32,500
Operating expenses	17,500	17,500
Equipment	<u>8,000</u>	<u>0</u>
Total	58,000	50,000

Funding:

General fund (01)	53,000	45,000
State special revenue (02)	<u>5,000</u>	<u>5,000</u>
Total	58,000	50,000

(continued)

Dave Lewis 2-9-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

KEN MILLER, PRIMARY SPONSOR DATE

Fiscal Note for SB0300, as introduced

SB 300