

1 SENATE BILL NO. 355

2 INTRODUCED BY B. MOLNAR

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING DISQUALIFICATION OF CERTAIN JUDGES  
5 RECEIVING POLITICAL CONTRIBUTIONS IF A RECUSAL REQUEST IS MADE; PROVIDING DEFINITIONS;  
6 ALLOWING A PERSON TO FILE A COMPLAINT WITH THE JUDICIAL STANDARDS COMMISSION, THE  
7 COMMISSIONER OF POLITICAL PRACTICES, OR A DISTRICT COURT; AMENDING SECTIONS 2-2-136  
8 AND 3-1-1105, MCA; AND REPEALING SECTION 3-1-609, MCA."

9

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

11

12 NEW SECTION. Section 1. Disqualification Request for recusal of judge receiving political  
13 contribution -- definition -- penalties. (1) A judge may ~~not sit or act~~ be asked to recuse in a proceeding if:

14 (a) (i) the judge has received a contribution in excess of the amount established in 13-37-216 from  
15 a party to the proceeding, a party's attorney, or the attorney's law firm; and

16 (ii) the contribution from the entity described in subsection (1)(a)(i) was received in support of the  
17 judge's ~~most recent~~ election or in anticipation of an upcoming election;

18 (b) a party to the proceeding, a party's attorney, or the attorney's law firm contributed to an  
19 independent committee, incidental committee, or a third-party organization that made an independent  
20 expenditure to support or oppose the judge's election; or

21 (c) a party, a party's attorney, or the attorney's law firm contributed to an organization that gave  
22 financial support, in-kind contributions, or made endorsements related to the judge's election.

23 (2) A party, a party's attorney, or the attorney's law firm who knows or should have known of the  
24 activities listed in subsection (1) shall disclose this information to the judge.

25 (3) A judge who ~~is required to be disqualified~~ may be asked to recuse as provided in subsection  
26 (1) shall disclose any contribution ~~that was the basis for the judge's disqualification~~ described in subsection (1).

27 The disclosure must be made in a legal notice and on the record. Upon disclosure of the information, the judge  
28 shall notify both parties and may be asked to recuse or the complainant may ask for a judge without similar

1 issues.

2 (4) A person alleging a violation of this section may file a complaint with:

3 (a) the commissioner of political practices under the ethics provisions of Title 2, chapter 2, part 1,  
4 for an allegation against a judge;

5 (b) the judicial standards commission as provided in Title 3, chapter 1, part 11, for an allegation  
6 against a judge; or

7 (c) a district court for an allegation against a judge or a party to a proceeding.

8 (5) Unless otherwise required to protect an individual's privacy, all documents related to  
9 complaints and investigations made to enforce this section are public as is allowed under Article II, section 9, of  
10 the Montana constitution.

11 (6) An attempt by a person to circumvent the provisions of this section is a felony misdemeanor  
12 punishable as provided in 46-18-213 46-18-212.

13 (7) As used in this section, the following definitions apply:

14 (a) "Contribution" has the meaning provided in 13-1-101.

15 (b) "Incidental committee" has the meaning provided in 13-1-101.

16 (c) "Independent committee" has the meaning provided in 13-1-101.

17 (d) "Independent expenditure" has the meaning provided in 13-1-101.

18 (e) "Judge" means a justice of the supreme court or a district court judge.

19

20 **Section 2.** Section 2-2-136, MCA, is amended to read:

21 **"2-2-136. Enforcement for state officers, legislators, and state employees -- referral of**

22 **complaint involving county attorney.** (1) (a) A person alleging a violation of this part by a state officer,  
23 legislator, or state employee may file a complaint with the commissioner of political practices.

24 (b) A person alleging a violation of [section 1] by a justice of the supreme court or a district court  
25 judge may file a complaint with the commissioner of political practices. The commissioner shall prioritize  
26 resolution of the complaint if it is filed prior to an election.

27 (c) \_\_\_\_\_ The commissioner does not have jurisdiction for a complaint concerning a legislator if a

28 legislative act is involved in the complaint. The commissioner also has jurisdiction over complaints against a

1 county attorney that are referred by a local government review panel pursuant to 2-2-144 or filed by a person  
2 directly with the commissioner pursuant to 2-2-144(6). If a complaint is filed against the commissioner or  
3 another individual employed in the office of the commissioner, the complaint must be resolved in the manner  
4 provided for in 13-37-111(5).

5 ~~(b)~~(d) The commissioner may request additional information from the complainant or the person who  
6 is the subject of the complaint to make an initial determination of whether the complaint states a potential  
7 violation of this part.

8 ~~(e)~~(e) The commissioner may dismiss a complaint that is frivolous, does not state a potential violation  
9 of this part, or does not contain sufficient allegations to enable the commissioner to determine whether the  
10 complaint states a potential violation of this part.

11 ~~(d)~~(f) ~~When~~ Unless required by [section 1], when a complaint is filed, the commissioner may issue  
12 statements or respond to inquiries to confirm that a complaint has been filed, to identify against whom it has  
13 been filed, and to describe the procedural aspects and status of the case.

14 (2) (a) If the commissioner determines that the complaint states a potential violation of this part,  
15 the commissioner shall hold an informal contested case hearing on the complaint as provided in Title 2, chapter  
16 4, part 6. However, if the issues presented in a complaint have been addressed and decided in a prior decision  
17 and the commissioner determines that no additional factual development is necessary, the commissioner may  
18 issue a summary decision without holding an informal contested case hearing on the complaint.

19 (b) Except as provided in 2-3-203, an informal contested case proceeding must be open to the  
20 public. Except as provided in Title 2, chapter 6, part 10, documents submitted to the commissioner for the  
21 informal contested case proceeding are presumed to be public information.

22 (c) The commissioner shall issue a decision based on the record established before the  
23 commissioner. The decision issued after a hearing is public information open to inspection.

24 (3) (a) Except as provided in subsection (3)(b) and [section 1] for a justice of the supreme court or  
25 a district court judge, if the commissioner determines that a violation of this part has occurred, the  
26 commissioner may impose an administrative penalty of not less than \$50 or more than \$1,000.

27 (b) If the commissioner determines that a violation of 2-2-121(4)(b) has occurred, the  
28 commissioner may impose an administrative penalty of not less than \$500 or more than \$10,000.

1 (c) If the violation was committed by a state employee, the commissioner may also recommend  
2 that the employing state agency discipline the employee. The employing entity of a state employee may take  
3 disciplinary action against an employee for a violation of this part, regardless of whether the commissioner  
4 makes a recommendation for discipline.

5 (d) The commissioner may assess the costs of the proceeding against the person bringing the  
6 charges if the commissioner determines that a violation did not occur or against the officer or employee if the  
7 commissioner determines that a violation did occur.

8 (4) A party may seek judicial review of the commissioner's decision, as provided in Title 2, chapter  
9 4, part 7, after a hearing, a dismissal, or a summary decision issued pursuant to this section.

10 (5) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this  
11 part."

12

13 **Section 3.** Section 3-1-1105, MCA, is amended to read:

14 **"3-1-1105. Confidential proceedings -- rules for commission.** (1) Except as provided in [section  
15 1(5)], 3-1-1107, and 3-1-1121 through 3-1-1126, all papers filed with and proceedings before the commission or  
16 masters are confidential and the filing of papers with and the testimony given before the commission or masters  
17 is privileged communication.

18 (2) The commission shall make rules for the conduct of its affairs and the enforcement of  
19 confidentiality consistent with this part."

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21 NEW SECTION. **Section 4. Repealer.** The following section of the Montana Code Annotated is  
22 repealed:

23 3-1-609. Judicial conflict of interest -- recusal -- definition.

24

25 NEW SECTION. **Section 5. Codification instruction.** [Section 1] is intended to be codified as an  
26 integral part of Title 3, chapter 1, part 6, and the provisions of Title 3, chapter 1, part 6, apply to [section 1].

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