

Briefing on Laws Related to Anonymous Election Material  
Prepared for the State Administration and Veterans' Affairs Interim Committee  
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The State Administration and Veterans' Affairs Interim Committee voted on June 24, 2011, to study the Commissioner of Political Practices' authority related to anonymous election material. This briefing outlines the laws related to anonymous election material and reviews two recent attempts to amend the law.

**Statutes Related to Anonymous Election Material**

Section 13-35-225, MCA, requires communications advocating the success or defeat of a candidate, political party, or ballot issue to include a "paid for by" attribution. The "paid for by" attribution must include clearly and conspicuously the name and address of the candidate or political committee that financed the communication. A political committee must also include the name of the political committee's treasurer. The law covers communications through a broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, internet website, or other form of general political advertising.

Subsection (2) of 13-35-225 requires a candidate in a partisan election to include the candidate's party affiliation or party symbol in all communications. Subsection (3) outlines requirements related to printed election material that discusses another candidate's voting record. The material must contain a reference to the specific vote or votes on which the information is based, disclose contrasting votes made by the candidate on the same issue if "closely related in time," and include a signed statement that the voting record is accurate to the best of the signer's knowledge. The statement must be signed by the candidate if prepared for a candidate's political committee or by the person financing the communication if the material is not prepared for a candidate or candidate's political committee.

In the case of advertising that is too small to allow space for the required printed information, the candidate or person financing the material is required to file with the Office of the Commissioner of Political Practices at the time of public distribution a copy of the election material and the information required.

If information required in section 13-35-225 is omitted and the candidate or person financing the communication discovers the omission, the Commissioner of Political Practices is to be notified within five days of the discovery of the omission. The material must be brought into compliance, and noncompliant material must be withdrawn from circulation "as soon as reasonably possible."

Section 13-35-225 does not include any penalties or fines for not complying with the law prohibiting anonymous election materials. However, section 13-37-128 provides that a person who intentionally or negligently violates section 13-35-225 is liable in a civil action brought by the Commissioner of Political Practices or a county attorney for an amount up to \$500.

**Recent Legislation Addressing Anonymous Election Material**

Sen. Christine Kaufmann introduced Senate Bill No. 397 (SB 397) in the 2011 legislative session to increase the authority of the Commissioner of Political Practices to enforce laws related to anonymous election material and to provide for penalties. SB 397 passed the Senate on Second Reading with a vote of 34-16 and later died in the House State Administration Committee on a tied 9-9 vote.

The major provisions of the bill included the addition of a new subsection (6) to section 13-35-225 that would have allowed the Commissioner of Political Practices to issue an order of noncompliance if the Commissioner determines that election material does not comply with the provisions of section 13-35-225 and the responsible party has been notified and had reasonable opportunity to comply. The new subsection (6) also referenced penalties contained in a new section of law. The new section would have established a penalty for violating 13-35-225 of up to \$300 for each order of noncompliance issued by the Commissioner of Political Practices. The new section of law also would have allowed a person against whom a civil penalty is imposed to request a hearing before the Commissioner of Political Practices. Subsection (3) of the proposed new section of SB 397 would have provided for judicial review if the outcome of the informal hearing is unacceptable to the person subjected to an order of noncompliance. The final two subsections of the proposed new section allowed penalties not paid in a timely manner to be subject to collection and provided that penalties collected under the section be deposited in the state general fund.

In the 2009 legislative session, Rep. Janna Taylor introduced House Bill No. 398 (HB 398), on which SB 397 was based. HB 398 included some provisions unrelated to anonymous election material, but the relevant portions are identical to the introduced version of SB 397. The amendments to SB 397 that differ from the introduced version and from HB 398 are:

- removal of the rulemaking authority to define an "instance" of violation and a change in penalty from \$100 for each instance with a maximum penalty of \$2,500 to a \$300 penalty for each order of noncompliance;
- an additional subsection in the new section that clarifies the right of a person unsatisfied with the outcome of the informal contested case hearing to seek judicial review;
- a change in SB 397 to the attribution requirements for political committees to require that the material contain the name and address of the political committee. Current law requires disclosure of the name of the committee, the name of the committee treasurer, and the address of the committee or the committee treasurer.

The House State Administration Committee tabled HB 398 on a unanimous vote. The Committee's discussion, however, focused on the part of HB 398 that relates to late filing of campaign finance reports and not the portion about anonymous election material. Committee members who spoke on the "do pass" motion indicated that the maximum penalty for filing late campaign finance reports was too high. There were no comments about the anonymous election material provisions.