

Office of the Commissioner of Political Practices

Issues to Address in 2013 Legislature

1. Clarify standard for illegal influence of voters

Statute#	Summary of Change	Rationale
13-35-214(2)	Adds "a person must act either knowingly or purposely" to violate the statute.	The statute is cumbersome and ambiguous, particularly the last clause, which appears to establish an exception under certain vaguely delineated circumstances. (Ames at p.6; Nixon at p. 4)

2. Clarify requirements report filing

Statute#	Summary of Change	Rationale
13-37-226	<p>a. Requires continued reporting for all candidates that leave their campaigns open after the election.</p> <p>b. Adds opt out language for candidates who have the inability to file their campaign finance reports electronically.</p>	<p>a. Candidates often leave a campaign open after the election is over. 13-37-228(3), requires candidates or committees to file a closing report when all debts and obligations have been met. Many campaigns take several years to close their campaigns. There is no additional reporting for state district or local elections required. Statewide campaigns are required to file a report twice a year for each year the campaign remains open. The additional reporting allows for CPP staff to ensure campaign compliance.</p> <p>b. Campaigns are required to maintain their accounting records for 4 years. If the campaign hasn't filed a closing report they are subject to investigation and the records could be difficult to retrieve and enforcement is impossible. (Wittich v. Campbell)</p>

3. Revise contribution limits for candidate running an exploratory campaign

Statute#	Summary of Change	Rationale
13-37-216	Add language that requires a candidate who is running an exploratory campaign to accept only lower contribution limit.	13-37-216, provides contribution limitations for all campaigns. A candidate running an exploratory campaign would be required to use the lower contribution limit of the offices that he/she is exploring to avoid accepting contributions over the limit should the candidate choose the office at a lower limit. (MRP v. Bullock)

4. Define “identical” as used in Clean Campaign Act

Statute#	Summary of Change	Rationale
13-35-402	Define the term “identical” for the purposes of the “Clean Campaign Act”	<p>The word “identical” is not defined in § 13-35-402, Mont. Code Ann., or any other provision of the Montana Code Annotated. Therefore, it is appropriate to look to at accepted dictionary definitions. <u>See Ravalli County v. Erickson</u>, 2004 MT 35, ¶ 13, 320 Mont. 31, ¶ 13, 85 P.3d 772, ¶ 13. According to Merriam-Webster’s Collegiate Dictionary, Eighth Edition (2008), “identical” is defined as 1. being the same; 2. having such close resemblance as to be essentially the same; 3. having the same cause or origins. Dictionary.com defines “identical” as 1. similar or alike in every way; 2. being the very same; 3. agreeing exactly. Depending on which of the first two commonly accepted definitions is applied, the statutory exception in subsection (1)(a) would apply if 1) the previously published campaign material is exactly the same as the later published material, or 2) if the previously published material is essentially the same.</p> <p>General principles of statutory construction set forth above dictate a statute derives its meaning from the entire body of words taken together, not the definition of one word. Therefore, it would be inappropriate to focus on the word “identical” in isolation, regardless of which dictionary definition seems most applicable. Because ambiguity exists when taking the definition of the word “identical” in context of the entire statute, it is appropriate to consider the legislative history of §13-35-402, Mont. Code Ann.</p> <p>The sponsor of the Montana Clean Campaign Act in 2007, Senator Joe Balyeat of Bozeman, was asked what the term “identical material” in §13-35-402, Mont. Code Ann., meant in a hearing before the Senate State Administration Committee during the 2007 Legislature. In his response (and in his closing before the House State Administration Committee), Senator Balyeat stated ‘identical material’ meant something that didn’t raise new issues, and that had been raised earlier in the campaign. Senator Balyeat stated that the intent of the clean campaign legislation was to eliminate the element of surprise.</p> <p>(<i>Gallagher v. MCV</i>, February 2011)</p>

5. Revise inspection of records

Statute#	Summary of Change	Rationale
13-37-209	Limit the ability to inspect campaign accounting records to a treasurer for an opposing campaign or the Commissioner. The change also requires that the records be made available to the Commissioner during regular business hours.	<ul style="list-style-type: none"> a. Enhances the authority for a campaign treasurer to inspect records upon writ issued by any court of competent jurisdiction. b. Gives authority to the Commissioner to ask the court for writ to inspect records as well. CPP has this authority now when a formal complaint is filed but this change would allow for inspection without a complaint if there is reasonable need to do so.

6. Clarify exemptions for school districts and special districts

Statute#	Summary of Change	Rationale
13-37-206	Clean up the statute to make the exemption include “candidates” not just “issues” Add 13-37-216 to the exemption so that there are contribution limitations on these type of campaigns.	<ul style="list-style-type: none"> a. The statute currently exempts all provisions of chapter 37 except for 13-37-217, for first or second class school districts or other types of special district elections that organize to support or oppose a school district issue. Since the statute only exempts “issue” groups, committees organized to support or oppose the exempted candidates are still required to register and report. The candidates themselves do not have to register or report to the COPP. This changes would make the statute consistent. b. In addition, the statute says that these candidates and committees are exempted from all provisions except for 13-37-217. That excludes them from contribution limits.

7. Clarify when candidate’s name is held off ballot

Statute#	Summary of Change	Rationale
13-37-126	Amendment is needed that adds “by this chapter and 2-2-106, MCA.”	The Business Disclosure Statement is a required form for all statewide and state district candidates. A candidate cannot receive an election certificate if they fail to file this form. For consistency, a candidate should be held off the ballot if they fail to file the required disclosure forms.

Referenced MCA Sections

13-35-214. Illegal influence of voters. A person may not, directly or indirectly, individually or through any other person, for any election, in order to induce any elector to vote or refrain from voting or to vote for or against any particular candidate, political party ticket, or ballot issue:

- (1) give, lend, agree to give or lend, offer, or promise any money, liquor, or valuable consideration or promise or endeavor to procure any money, liquor, or valuable consideration;
- (2) promise to appoint another person or promise to secure or aid in securing the appointment, nomination, or election of another person to a public or private position or employment or to a position of honor, trust, or emolument in order to aid or promote the candidate's nomination or election, except that the candidate may publicly announce or define the candidate's choice or purpose in relation to an election in which the candidate may be called to take part if elected.

History: En. [23-47-122](#) by Sec. 22, Ch. 334, L. 1977; R.C.M. 1947, [23-47-122](#); amd. Sec. 96, Ch. 56, L. 2009.

13-35-402. Fair notice period before election -- definition. (1) A candidate, a political committee that has filed a certification under [13-37-201](#), and an independent political committee shall at the time specified in subsection (3) of this section provide to candidates listed in subsection (2) of this section any final copy of campaign advertising in print media, in printed material, or by broadcast media that is intended for public distribution in the 10 days prior to an election unless:

- (a) identical material was already published or broadcast; or
 - (b) the material does not identify or mention the opposing candidate.
- (2) The material must be provided to all other candidates who have filed for the same office and who are individually identified or mentioned in the advertising, except candidates mentioned in the context of endorsements.
- (3) Final copies of material described in subsection (1) must be provided to the candidates listed in subsection (2) at the following times:
- (a) at the time the material is published or broadcast or disseminated to the public;
 - (b) if the material is disseminated by direct mail, on the date of the postmark; or
 - (c) if the material is prepared and disseminated by hand, on the day the material is first being made available to the general public.
- (4) The copy of the material that must be provided to the candidates listed in subsection (2) must be provided by electronic mail, facsimile transmission, or hand delivery, with a copy provided by direct mail if the recipient does not have available either electronic mail or facsimile transmission. If the material is for broadcast media, the copy provided must be a written transcript of the broadcast.
- (5) For the purposes of this section, an "independent political committee" is a committee that is not specifically organized on behalf of a particular candidate or that is not controlled either directly or indirectly by a candidate or a candidate's committee in conjunction with the making of expenditures or accepting contributions.

History: En. Sec. 2, Ch. 508, L. 2007.

13-37-206. Exception for certain school districts and certain special districts. (1) The provisions of this part, except [13-37-217](#), do not apply to candidates for the office of trustee of a school district, their political campaigns, and political committees organized to support or oppose a school district issue when the school district is:

- (a) a first-class district located in a county having a population of less than 15,000;
- (b) a second- or third-class district; or
- (c) a county high school district having a student enrollment of less than 2,000.

(2) The provisions of this part, except [13-37-217](#), do not apply to candidates, their political campaigns, and political committees organized to support or oppose an issue if the candidate is running for or the committee's issue involves a unit of local government authorized by law to perform a single function or a limited number of functions, including but not limited to a conservation district, a weed management district, a fire district, a community college district, a hospital district, an irrigation district, a sewer district, a transportation district, a water district, or any district or other entity formed by interlocal agreement.

History: En. 23-4781 by Sec. 6, Ch. 480, L. 1975; amd. Sec. 2, Ch. 23, L. 1977; R.C.M. 1947, 23-4781(7); amd. Sec. 250, Ch. 571, L. 1979; amd. Sec. 1, Ch. 361, L. 1991; amd. Sec. 1, Ch. 191, L. 2003; amd. Sec. 127, Ch. 56, L. 2009.

13-37-209. Inspection of records. Accounts kept by the campaign treasurer of a candidate or political committee may be inspected under reasonable circumstances before, during, or after the election to which the accounts refer by the campaign treasurer of any opposing candidate or political committee in the same electoral district. The right of inspection may be enforced by appropriate writ issued by any court of competent jurisdiction. The campaign treasurers of political committees supporting a candidate may be joined with the campaign treasurer of the candidate as respondents in such a proceeding.

History: En. 23-4783 by Sec. 8, Ch. 480, L. 1975; R.C.M. 1947, 23-4783(2).

13-37-216. Limitations on contributions -- adjustment. (1) (a) Subject to adjustment as provided for in subsection (4), aggregate contributions for each election in a campaign by a political committee or by an individual, other than the candidate, to a candidate are limited as follows:

(i) for candidates filed jointly for the office of governor and lieutenant governor, not to exceed \$500;

(ii) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed \$250;

(iii) for a candidate for any other public office, not to exceed \$130.

(b) A contribution to a candidate includes contributions made to the candidate's committee and to any political committee organized on the candidate's behalf.

(2) (a) A political committee that is not independent of the candidate is considered to be organized on the candidate's behalf. For the purposes of this section, an independent committee means a committee that is not specifically organized on behalf of a particular candidate or that is

not controlled either directly or indirectly by a candidate or candidate's committee and that does not act jointly with a candidate or candidate's committee in conjunction with the making of expenditures or accepting contributions.

(b) A leadership political committee maintained by a political officeholder is considered to be organized on the political officeholder's behalf.

(3) All political committees except those of political party organizations are subject to the provisions of subsections (1) and (2). For purposes of this subsection, "political party organization" means any political organization that was represented on the official ballot at the most recent gubernatorial election. Political party organizations may form political committees that are subject to the following aggregate limitations, adjusted as provided for in subsection (4), from all political party committees:

(a) for candidates filed jointly for the offices of governor and lieutenant governor, not to exceed \$18,000;

(b) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed \$6,500;

(c) for a candidate for public service commissioner, not to exceed \$2,600;

(d) for a candidate for the state senate, not to exceed \$1,050;

(e) for a candidate for any other public office, not to exceed \$650.

(4) (a) The commissioner shall adjust the limitations in subsections (1) and (3) by multiplying each limit by an inflation factor, which is determined by dividing the consumer price index for June of the year prior to the year in which a general election is held by the consumer price index for June 2002.

(b) The resulting figure must be rounded up or down to the nearest:

(i) \$10 increment for the limits established in subsection (1); and

(ii) \$50 increment for the limits established in subsection (3).

(c) The commissioner shall publish the revised limitations as a rule.

(5) A candidate may not accept any contributions, including in-kind contributions, in excess of the limits in this section.

(6) For purposes of this section, "election" means the general election or a primary election that involves two or more candidates for the same nomination. If there is not a contested primary, there is only one election to which the contribution limits apply. If there is a contested primary, then there are two elections to which the contribution limits apply.

History: En. 23-4795 by Sec. 1, Ch. 481, L. 1975; amd. Sec. 67, Ch. 365, L. 1977; R.C.M. 1947, 23-4795; amd. Sec. 253, Ch. 571, L. 1979; amd. Sec. 1, I.M. No. 118, approved Nov. 8, 1994; amd. Sec. 1, Ch. 462, L. 2003; amd. Sec. 1, Ch. 328, L. 2007; amd. Sec. 1, Ch. 94, L. 2009.

13-37-226. Time for filing reports. (1) Candidates for a state office filled by a statewide vote of all the electors of Montana and political committees that are organized to support or oppose a particular statewide candidate shall file reports electronically as follows:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that the candidate expects to be on the ballot;

(b) on the 10th day of March, April, July, August, and September;

- (c) on the 15th and 5th days preceding the date on which an election is held;
- (d) within 24 hours after receiving a contribution of \$200 or more if received between the 10th day before the election and the day of the election;
- (e) not more than 20 days after the date of the election; and
- (f) on the 10th day of March and September of each year following an election until the candidate or political committee files a closing report as specified in [13-37-228](#)(3).

(2) Political committees organized to support or oppose a particular statewide ballot issue shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which the text of the proposed ballot issue is submitted for review and approval pursuant to [13-27-202](#) during the year or years prior to the election year that an issue is or is expected to be on the ballot;

(b) on the 10th day of March and on the 10th day of each subsequent month through September in each year that an election is to be held;

(c) on the 15th and 5th days preceding the date on which an election is held;

(d) within 24 hours after receiving a contribution of \$500 or more if received between the 10th day before the election and the day of the election;

(e) within 20 days after the election; and

(f) on the 10th day of March and September of each year following an election until the political committee files a closing report as specified in [13-37-228](#)(3).

(3) Candidates for a state district office, including but not limited to candidates for the legislature, the public service commission, or a district court judge, and political committees that are specifically organized to support or oppose a particular state district candidate or issue shall file reports:

(a) on the 12th day preceding the date on which an election is held;

(b) within 48 hours after receiving a contribution of \$100 or more if received between the 17th day before the election and the day of the election. The report under this subsection (3)(b) must be made by mail or by electronic communication to the commissioner pursuant to [13-37-225](#).

(c) not more than 20 days after the date of the election; and

(d) whenever a candidate or political committee files a closing report as specified in [13-37-228](#)(3).

(4) Candidates for any other public office and political committees that are specifically organized to support or oppose a particular local issue shall file the reports specified in subsection (3) only if the total amount of contributions received or the total amount of funds expended for all elections in a campaign, excluding the filing fee paid by the candidate, exceeds \$500, except as provided in [13-37-206](#).

(5) For the purposes of this subsection, a committee that is not specifically organized to support or oppose a particular candidate or ballot issue and that receives contributions and makes expenditures in conjunction with an election is an independent committee. For the purpose of reporting, a political party committee is an independent committee. An independent committee shall file:

(a) a report on the 12th day preceding the date of an election in which it participates by making an expenditure;

(b) a report within 24 hours of making an expenditure or incurring a debt or obligation of \$500 or more for election material described in [13-35-225](#)(1) if made between the 17th day

before the election and the day of the election;

(c) a report not more than 20 days after the date of the election in which it participates by making an expenditure; and

(d) a report on a date to be prescribed by the commissioner for a closing report at the close of each calendar year.

(6) The commissioner may promulgate rules regarding the extent to which organizations that are incidental political committees shall report their politically related activities in accordance with this chapter.

(7) Except as provided in subsections (1)(d), (2)(d), (3)(b), and (5)(b), all reports required by this section must be complete as of the fifth day before the date of filing as specified in [13-37-228\(2\)](#) and this section.

History: En. 23-4778 by Sec. 3, Ch. 480, L. 1975; amd. Sec. 1, Ch. 23, L. 1977; R.C.M. 1947, 23-4778(3) thru (6); amd. Sec. 256, Ch. 571, L. 1979; amd. Sec. 2, Ch. 339, L. 1989; amd. Sec. 1, Ch. 75, L. 1991; amd. Sec. 20, Ch. 10, L. 1993; amd. Sec. 1, Ch. 208, L. 1993; amd. Sec. 9, Ch. 18, L. 1995; amd. Sec. 1, Ch. 86, L. 1995; amd. Sec. 16, Ch. 401, L. 2001; amd. Sec. 25, Ch. 481, L. 2007; amd. Sec. 1, Ch. 252, L. 2009; amd. Sec. 1, Ch. 274, L. 2009; amd. Sec. 53, Ch. 297, L. 2009; amd. Sec. 2, Ch. 6, L. 2011.

13-37-126. Names not to appear on ballot. (1) The name of a candidate may not appear on the official ballot for an election if the candidate or a treasurer for a candidate fails to file any statement or report as required by this chapter.

(2) A vacancy on an official ballot under this section may be filled in the manner provided by law, but not by the name of the same candidate.

(3) (a) In carrying out the mandate of this section, the commissioner shall, by a written statement, notify the secretary of state or the election administrator that a candidate or a candidate's treasurer has not complied with the provisions of this chapter, as described in subsection (1), and that a candidate's name may not appear on the official ballot.

(b) The commissioner shall provide the notification:

(i) within 8 calendar days after the close of the certification deadline provided in [13-10-208\(1\)](#) for primary elections held pursuant to [13-1-107\(1\)](#); or

(ii) by the earliest date specified under [13-10-208\(2\)](#) for the county election administrator to certify the ballot for primary elections held pursuant to [13-1-107\(2\)](#) or (3); and

(iii) by no later than 7 days before the ballot certification deadline provided in [13-12-201](#) for general elections.

History: En. 23-4791 by Sec. 16, Ch. 480, L. 1975; R.C.M. 1947, 23-4791; amd. Sec. 242, Ch. 571, L. 1979; amd. Sec. 1, Ch. 25, L. 1997; amd. Sec. 13, Ch. 401, L. 2001; amd. Sec. 86, Ch. 414, L. 2003; amd. Sec. 15, Ch. 292, L. 2009.