

House Bill 3324

Sponsored by Representative KRIEGER; Representatives CAMERON, ESQUIVEL, JENSON, MAURER, SCHAUFLE, WHISNANT, Senator METSGER

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies time within which filing officer must determine whether violation related to certain campaign finance laws occurred and notify person who is subject of violation.

Modifies amount of civil penalties that may be imposed for failure to file certain statements related to campaign finance or failure to include required information in statement. Provides that interest on penalty may not exceed certain rate.

A BILL FOR AN ACT

1
2 Relating to campaign finance; creating new provisions; and amending ORS 260.232 and 260.345.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS chapter 260.**

5 **SECTION 2. (1) A filing officer having reason to believe that a violation of an election law**
6 **or rule for which a civil penalty may be imposed under ORS 260.232 has occurred shall pro-**
7 **ceed promptly as though the officer had received a complaint under ORS 260.345 and, not**
8 **later than 90 days following the election at which the violation is alleged to have occurred**
9 **or 90 days following the date the violation is alleged to have occurred, whichever is later,**
10 **shall:**

11 **(a) Determine whether a violation occurred; and**

12 **(b) If a penalty is to be imposed, notify the person as described in ORS 260.232 (2).**

13 **(2) Not later than 10 calendar days after receipt of payment for a penalty imposed under**
14 **ORS 260.232, the Secretary of State shall send a notice to the person stating whether the**
15 **payment received is sufficient.**

16 **SECTION 3. ORS 260.232 is amended to read:**

17 260.232. (1) The Secretary of State may impose a civil penalty as provided in this section, in
18 addition to any other penalty that may be imposed, for:

19 (a) Failure to file a statement or certificate required to be filed under ORS 260.044 (1), 260.057,
20 260.076, 260.078, 260.083, 260.102, 260.112 or 260.118.

21 (b) Failure to include in a statement filed under ORS 260.057, 260.076, 260.078, 260.083, 260.102,
22 260.112 or 260.118 the information required under ORS 260.057, 260.076, 260.083, 260.102 or 260.118.

23 (2) If a person required to file has not filed a statement or certificate complying with applicable
24 provisions of ORS 260.044 (1), 260.057, 260.076, 260.078, 260.083, 260.085, 260.102, 260.112 or 260.118
25 within the time specified in ORS 260.057, 260.076, 260.078 or 260.118, the Secretary of State by cer-
26 tified mail shall notify the person that a penalty may be imposed and that the person has 20 days
27 to request a hearing before the Secretary of State. If the person required to file is a candidate or
28 the principal campaign committee of a candidate, the Secretary of State shall send the notice de-
29 scribed in this subsection by certified mail to the individual who is the candidate and by first class

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 mail to the candidate's treasurer or the treasurer of the candidate's principal campaign committee.
 2 The notice sent by certified mail to the individual who is a candidate shall be used for purposes of
 3 determining the deadline for requesting a hearing under subsection (3) of this section. The Secretary
 4 of State is not required to send two notices if the candidate serves as the treasurer of the candi-
 5 date's principal campaign committee.

6 (3) A hearing on whether to impose a civil penalty and to consider circumstances in mitigation
 7 shall be held by the Secretary of State:

8 (a) Upon request of the person against whom the penalty may be assessed, if the request is made
 9 not later than the 20th day after the person received the notice sent under subsection (2) of this
 10 section;

11 (b) Upon request of the filing officer with whom a statement or certificate was required to be
 12 filed but was not filed; or

13 (c) Upon the Secretary of State's own motion.

14 (4) A hearing under subsection (3) of this section shall be held not later than 30 days after the
 15 deadline for the person against whom the penalty may be assessed to request a hearing. However,
 16 if requested by the person against whom the penalty may be assessed, a hearing under subsection
 17 (3) of this section shall be held not later than 45 days after the deadline for the person against whom
 18 the penalty may be assessed to request a hearing.

19 (5) The Secretary of State shall issue an order not later than 90 days after a hearing or after
 20 the deadline for requesting a hearing if no hearing is held.

21 (6) The person against whom a penalty may be assessed need not appear in person at a hearing
 22 held under this section, but instead may submit written testimony and other evidence, subject to the
 23 penalty for false swearing, to the Secretary of State for entry in the hearing record. The testimony
 24 and other evidence must be received by the secretary not later than three business days before the
 25 day of the hearing.

26 (7) A civil penalty imposed under this section may not be more than **the following**:

27 (a) *[\$10,000]* For failure to file a statement or certificate required to be filed under ORS 260.044
 28 (1), 260.057, 260.076, 260.078, 260.083, 260.102, 260.112 or 260.118, **the total amount of the contri-**
 29 **butions, expenditures or other transactions that should have been included in the statement**
 30 **or for which a certificate should have been filed; or**

31 (b) *[\$10,000]* For each failure to include in a statement filed under ORS 260.057, 260.076, 260.078,
 32 260.083, 260.102, 260.112 or 260.118 the information required under ORS 260.057, 260.076, 260.083,
 33 260.102 or 260.118, **the total amount of the contributions, expenditures or other transactions**
 34 **that were not included, or were incorrectly included in the statement, or the amount of the**
 35 **contributions, expenditures or transactions connected to the information that was not in-**
 36 **cluded.**

37 (8) The Secretary of State, upon a showing of mitigating circumstances, may reduce the amount
 38 of the penalty described in subsection (7) of this section.

39 (9) Except as otherwise provided by this section, civil penalties under this section shall be im-
 40 posed as provided in ORS 183.745.

41 (10) **If the Secretary of State charges interest on a penalty due under this section, the**
 42 **secretary may charge interest beginning on the date the secretary provides notice to the**
 43 **person against whom the penalty is imposed of the final order imposing the penalty. The rate**
 44 **of interest charged may not exceed three percent in excess of the federal funds rate in effect**
 45 **at the Federal Reserve Bank in the Federal Reserve district in which the office of the sec-**

1 **retary is located.**

2 **SECTION 4.** ORS 260.345 is amended to read:

3 260.345. (1) Any elector may file with any filing officer a written complaint alleging that a vio-
 4 lation of an election law or rule adopted by the Secretary of State under ORS chapters 246 to 260
 5 has occurred and stating the reason for believing that the violation occurred and any evidence re-
 6 lating to it. A complaint alleging a violation involving the Secretary of State, a candidate for the
 7 office of Secretary of State, or any political committee or person supporting the Secretary of State
 8 or a candidate for the office of Secretary of State may be filed with the Attorney General. The
 9 Secretary of State or Attorney General shall not accept an anonymous complaint.

10 (2) The Secretary of State by rule shall prescribe the procedure for processing a complaint filed
 11 with any person other than the Secretary of State. If the complaint concerns the Secretary of State,
 12 any candidate for the office of the Secretary of State, or any political committee or person sup-
 13 porting the candidacy of the Secretary of State or of another person for the office of Secretary of
 14 State, the complaint and any additional information relating to the complaint shall be sent to the
 15 Attorney General.

16 (3) Upon receipt of a complaint under subsection (1) or (2) of this section the Secretary of State
 17 or Attorney General immediately shall examine the complaint to determine whether a violation of
 18 an election law or rule has occurred and shall make any investigation the Secretary of State or
 19 Attorney General considers necessary. Except as provided in this subsection, within 48 hours of
 20 receiving a complaint under subsection (1) or (2) of this section, the Secretary of State or Attorney
 21 General shall notify the person who is the subject of the complaint that a complaint has been re-
 22 ceived. If the Secretary of State or Attorney General receives a complaint or complaints involving
 23 25 or more individuals or political committees in any 24-hour period, the Secretary of State or At-
 24 torney General need not notify the persons who are the subjects of those complaints within 48 hours
 25 of receiving the complaints but shall notify those persons not later than 10 business days after re-
 26 ceiving the complaint or complaints.

27 (4) If the Secretary of State believes after an investigation under subsection (3) of this section
 28 that a violation of an election law or rule has occurred, the secretary:

29 (a) In the case of a violation that is subject to a penalty under ORS 260.993, immediately shall
 30 report the findings to the Attorney General and request prosecution. If the violation involves the
 31 Attorney General, a candidate for that office or a political committee or person supporting or op-
 32 posing the Attorney General or a candidate for that office, the Secretary of State shall appoint an-
 33 other prosecutor for that purpose; or

34 (b) In the case of a violation not subject to a penalty under ORS 260.993, may impose a civil
 35 penalty under ORS 260.995.

36 (5) Upon receipt of a complaint or report under subsection (1), (2) or (4) of this section involving
 37 an alleged violation subject to a penalty under ORS 260.993, the Attorney General or other
 38 prosecutor immediately shall examine the complaint or report to determine whether a violation of
 39 an election law has occurred. If the Attorney General or prosecutor determines that a violation
 40 has occurred, the Attorney General or prosecutor immediately shall begin prosecution in the name
 41 of the state. The Attorney General or other prosecutor shall have the same powers in any county
 42 of this state as the district attorney for the county.

43 (6) Upon receipt of a complaint under subsection (1) or (2) of this section involving an alleged
 44 violation of an election law or rule not subject to a penalty under ORS 260.993, the Attorney Gen-
 45 eral shall examine the complaint to determine whether a violation of an election law or rule has

1 occurred and shall make any investigation the Attorney General considers necessary. If the Attor-
 2 ney General believes after an investigation that a violation of an election law or rule has occurred,
 3 the Attorney General may impose a civil penalty under ORS 260.995.

4 (7) In the case of an alleged violation subject to a civil penalty under ORS 260.995, a complaint
 5 shall be filed by an elector under this section no later than 90 days following the election at which
 6 a violation of an election law or rule is alleged to have occurred, or 90 days following the date the
 7 violation of an election law or rule is alleged to have occurred, whichever is later.

8 (8) **Except as provided in section 2 of this 2009 Act**, a filing officer having reason to believe
 9 that a violation of an election law or rule has occurred shall proceed promptly as though the officer
 10 had received a complaint. A filing officer shall proceed under this subsection no later than two years
 11 following the election at which a violation of an election law or rule is alleged to have occurred,
 12 or two years following the date the violation of an election law or rule is alleged to have occurred,
 13 whichever is later. If a filing officer has not proceeded within two years because of fraud, deceit,
 14 misleading representation or the filing officer could not have reasonably discovered the alleged vi-
 15 olation, the filing officer shall proceed no later than five years following the election at which a
 16 violation of an election law or rule is alleged to have occurred, or five years following the date the
 17 violation of an election law or rule is alleged to have occurred, whichever is later.

18 **SECTION 5. Section 2 of this 2009 Act and the amendments to ORS 260.232 and 260.345**
 19 **by sections 3 and 4 of this 2009 Act apply to violations of provisions of ORS chapter 260 that**
 20 **occur on or after the effective date of this 2009 Act.**

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