

House Bill 3395

Sponsored by Representative KENNEMER (at the request of Oregonians In Action)

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**.

Prohibits corporations and labor unions from making contributions to political candidates or political committees from treasury funds and from making independent expenditures from treasury funds.

Takes effect only if amendment to Oregon Constitution by House Joint Resolution 44 (2009) allowing regulation of campaign contributions is approved by people at next regular general election. Takes effect on effective date of constitutional amendment proposed in House Joint Resolution 44 (2009).

A BILL FOR AN ACT

1
2 Relating to campaign finance; creating new provisions; amending ORS 260.005, 260.041, 260.044 and
3 260.737; and prescribing an effective date.

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

5 **SECTION 1. Sections 2 and 3 of this 2009 Act are added to and made a part of ORS**
6 **chapter 260.**

7 **SECTION 2. (1) A corporation, professional corporation, nonprofit corporation or labor**
8 **organization may not:**

9 (a) **Make a contribution or expenditure directly or indirectly from treasury funds to or**
10 **on behalf of any candidate or political committee.**

11 (b) **Make an independent expenditure directly or indirectly from treasury funds.**

12 (2) **Subsection (1) of this section does not apply to:**

13 (a) **Contributions from a corporation, professional corporation, nonprofit corporation or**
14 **labor organization to a political committee organized exclusively to support or oppose a**
15 **measure; or**

16 (b) **Communications on any subject made by a corporation, professional corporation or**
17 **nonprofit corporation to its shareholders and executive or administrative personnel and their**
18 **families or by a labor organization aimed at its members and their families.**

19 (3) **This section does not prohibit the establishment and administration of and solicitation**
20 **of contributions to a political committee to be utilized for political purposes by a corporation,**
21 **professional corporation, nonprofit corporation or labor organization. The name of a political**
22 **committee described in this subsection must contain the name of the corporation, profes-**
23 **sional corporation, nonprofit corporation or labor organization. A political committee de-**
24 **scribed in this subsection may receive contributions from the shareholders and executive or**
25 **administrative personnel of the corporation, professional corporation or nonprofit corpo-**
26 **ration and their families or, in the case of a labor organization, from members of the labor**
27 **organization and their families.**

28 (4) **A political committee described in subsection (3) of this section:**

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 (a) May not make a contribution or expenditure by utilizing money or anything of value
2 secured through the use of physical force, job discrimination or financial reprisal or by
3 threat of the use of physical force, job discrimination or financial reprisal;

4 (b) May not make more than two written solicitations of an individual for contributions
5 to the political committee per calendar year;

6 (c) Shall include in any solicitation for contributions to the political committee a state-
7 ment that contributions to the committee are voluntary and that the individual may refuse
8 to contribute without any reprisal;

9 (d) May not solicit contributions to the political committee from individuals while the
10 individuals are on the job during working hours; and

11 (e) May solicit contributions only from the shareholders and executive or administrative
12 personnel of the corporation, professional corporation or nonprofit corporation and their
13 families or, in the case of a labor organization, from members of the labor organization and
14 their families.

15 (5) This section does not apply to contributions or expenditures made by a nonprofit
16 corporation if the nonprofit corporation:

17 (a) Is formed for the express purpose of promoting political ideas and does not engage in
18 business activities;

19 (b) Does not have shareholders or other persons, other than employees and creditors
20 with no ownership interest, affiliated with the nonprofit corporation in any way that could
21 allow them to make a claim against the assets or earnings of the nonprofit corporation; and

22 (c) Is not established by a corporation, professional corporation or labor organization and
23 does not accept any contributions from corporations.

24 (6) This section does not apply to expenditures made by a corporation that as its primary
25 purpose operates a broadcasting station or produces a newspaper, magazine or other regu-
26 larly published publication.

27 **SECTION 3.** The Secretary of State or Attorney General may impose a civil penalty under
28 **ORS 260.995** for each violation of section 2 of this 2009 Act not to exceed the greater of \$1,000
29 or three times the amount of the contribution or expenditure made.

30 **SECTION 4.** ORS 260.005 is amended to read:

31 260.005. As used in this chapter:

32 (1)(a) "Candidate" means:

33 (A) An individual whose name is printed on a ballot, for whom a declaration of candidacy,
34 nominating petition or certificate of nomination to public office has been filed or whose name is
35 expected to be or has been presented, with the individual's consent, for nomination or election to
36 public office;

37 (B) An individual who has solicited or received and accepted a contribution, made an expendi-
38 ture, or given consent to an individual, organization, political party or political committee to solicit
39 or receive and accept a contribution or make an expenditure on the individual's behalf to secure
40 nomination or election to any public office at any time, whether or not the office for which the in-
41 dividual will seek nomination or election is known when the solicitation is made, the contribution
42 is received and retained or the expenditure is made, and whether or not the name of the individual
43 is printed on a ballot; or

44 (C) A public office holder against whom a recall petition has been completed and filed.

45 (b) For purposes of this section and ORS 260.035 to 260.156, "candidate" does not include a

1 candidate for the office of precinct committeeperson.

2 (2) "Committee director" means any person who directly and substantially participates in
 3 decision-making on behalf of a political committee concerning the solicitation or expenditure of
 4 funds and the support of or opposition to candidates or measures. The officers of a political party
 5 shall be considered the directors of any political party committee of that party, unless otherwise
 6 provided in the party's bylaws.

7 (3)(a) Except as provided in ORS 260.007, "contribute" or "contribution" includes:

8 (A) The payment, loan, gift, forgiving of indebtedness, or furnishing without equivalent compen-
 9 sation or consideration, of money, services other than personal services for which no compensation
 10 is asked or given, supplies, equipment or any other thing of value:

11 (i) For the purpose of influencing an election for public office or an election on a measure, or
 12 of reducing the debt of a candidate for nomination or election to public office or the debt of a pol-
 13 itical committee; or

14 (ii) To or on behalf of a candidate, political committee or measure; and

15 (B) Any unfulfilled pledge, subscription, agreement or promise, whether or not legally enforcea-
 16 ble, to make a contribution.

17 (b) Regarding a contribution made for compensation or consideration of less than equivalent
 18 value, only the excess value of it shall be considered a contribution.

19 (4)(a) "Controlled committee" means a political committee that, in connection with the making
 20 of contributions or expenditures:

21 (A) Is controlled directly or indirectly by a candidate or a controlled committee; or

22 (B) Acts jointly with a candidate or controlled committee.

23 (b) For purposes of this subsection, a candidate controls a political committee if:

24 (A) The candidate, the candidate's agent, a member of the candidate's immediate family or any
 25 other political committee that the candidate controls has a significant influence on the actions or
 26 decisions of the political committee; or

27 (B) The candidate's principal campaign committee and the political committee both have the
 28 candidate or a member of the candidate's immediate family as a treasurer or director.

29 (5) "County clerk" means the county clerk or the county official in charge of elections.

30 (6) "Elector" means an individual qualified to vote under section 2, Article II of the Oregon
 31 Constitution.

32 (7) Except as provided in ORS 260.007, "expend" or "expenditure" includes the payment or fur-
 33 nishing of money or anything of value or the incurring or repayment of indebtedness or obligation
 34 by or on behalf of a candidate, political committee or person in consideration for any services,
 35 supplies, equipment or other thing of value performed or furnished for any reason, including support
 36 of or opposition to a candidate, political committee or measure, or for reducing the debt of a can-
 37 didate for nomination or election to public office. "Expenditure" also includes contributions made
 38 by a candidate or political committee to or on behalf of any other candidate or political committee.

39 (8) "Filing officer" means:

40 (a) The Secretary of State:

41 (A) Regarding a candidate for public office;

42 (B) Regarding a statement required to be filed under ORS 260.118;

43 (C) Regarding any measure; or

44 (D) Regarding any political committee.

45 (b) Notwithstanding paragraph (a) of this subsection, in the case of an irrigation district formed

1 under ORS chapter 545:

2 (A) The county clerk, regarding any candidate for office or any measure at an irrigation district
3 formation election where the proposed district is situated wholly in one county;

4 (B) The county clerk of the county in which the office of the secretary of the proposed irrigation
5 district will be located, regarding any candidate for office or any measure at an irrigation district
6 formation election where the proposed district is situated in more than one county; or

7 (C) The secretary of the irrigation district for any election other than an irrigation district
8 formation election.

9 (9) "Independent expenditure" means an expenditure by a person for a communication in support
10 of or in opposition to a clearly identified candidate or measure that is not made with the cooper-
11 ation or with the prior consent of, or in consultation with, or at the request or suggestion of, a
12 candidate or any agent or authorized committee of the candidate, or any political committee or
13 agent of a political committee supporting or opposing a measure. For purposes of this subsection:

14 (a) A communication is "in support of or in opposition to" a candidate or measure if:

15 (A) The communication, taken in its context, clearly and unambiguously urges the election or
16 defeat of a clearly identified candidate for nomination or election to public office, or the passage
17 or defeat of a clearly identified measure;

18 (B) The communication, as a whole, seeks action rather than simply conveying information; and

19 (C) It is clear what action the communication advocates.

20 (b) "Agent" means any person who has:

21 (A) Actual oral or written authority, either express or implied, to make or to authorize the
22 making of expenditures on behalf of a candidate or on behalf of a political committee supporting or
23 opposing a measure; or

24 (B) Been placed in a position within the campaign organization where it would reasonably ap-
25 pear that in the ordinary course of campaign-related activities the person may authorize expen-
26 ditures.

27 (c) "Clearly identified" means, with respect to candidates:

28 (A) The name of the candidate involved appears;

29 (B) A photograph or drawing of the candidate appears; or

30 (C) The identity of the candidate is apparent by unambiguous reference.

31 (d) "Clearly identified" means, with respect to measures:

32 (A) The ballot number of the measure appears;

33 (B) A description of the measure's subject or effect appears; or

34 (C) The identity of the measure is apparent by unambiguous reference.

35 (e) "Made with the cooperation or with the prior consent of, or in consultation with, or at the
36 request or suggestion of, a candidate or any agent or authorized committee of the candidate, or any
37 political committee or agent of a political committee supporting or opposing a measure":

38 (A) Means any arrangement, coordination or direction by the candidate or the candidate's agent,
39 or by any political committee or agent of a political committee supporting or opposing a measure,
40 prior to the publication, distribution, display or broadcast of the communication. An expenditure
41 shall be presumed to be so made when it is:

42 (i) Based on information about the plans, projects or needs of the candidate, or of the political
43 committee supporting or opposing a measure, and provided to the expending person by the candidate
44 or by the candidate's agent, or by any political committee or agent of a political committee sup-
45 porting or opposing a measure, with a view toward having an expenditure made; or

1 (ii) Made by or through any person who is or has been authorized to raise or expend funds, who
 2 is or has been an officer of a political committee authorized by the candidate or by a political
 3 committee or agent of a political committee supporting or opposing a measure, or who is or has been
 4 receiving any form of compensation or reimbursement from the candidate, the candidate’s principal
 5 campaign committee or agent or from any political committee or agent of a political committee
 6 supporting or opposing a measure; and

7 (B) Does not include providing to the expending person upon request a copy of this chapter or
 8 any rules adopted by the Secretary of State relating to independent expenditures.

9 (10) “Initiative petition” means a petition to initiate a measure for which a prospective petition
 10 has been filed but that is not yet a measure.

11 (11) “Judge” means judge of the Supreme Court, Court of Appeals, circuit court or the Oregon
 12 Tax Court.

13 **(12) “Labor organization” means any organization of any kind, or any agency or employee**
 14 **representation committee or plan, in which employees participate and that exists for the**
 15 **purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes,**
 16 **wages, rates of pay, hours of employment or conditions of work.**

17 [(12)] (13) “Mass mailing” means more than 200 substantially similar pieces of mail, but does
 18 not include a form letter or other mail that is sent in response to an unsolicited request, letter or
 19 other inquiry.

20 [(13)] (14) “Measure” includes any of the following submitted to the people for their approval
 21 or rejection at an election:

- 22 (a) A proposed law.
- 23 (b) An Act or part of an Act of the Legislative Assembly.
- 24 (c) A revision of or amendment to the Oregon Constitution.
- 25 (d) Local, special or municipal legislation.
- 26 (e) A proposition or question.

27 [(14)] (15) “Occupation” means:

- 28 (a) The nature of an individual’s principal business; and
- 29 (b) If the individual is employed by another person, the business name and address, by city and
 30 state, of the employer.

31 [(15)] (16) “Person” means an individual, corporation, limited liability company, labor organiza-
 32 tion, association, firm, partnership, joint stock company, club, organization or other combination of
 33 individuals having collective capacity.

34 [(16)(a)] (17)(a) “Political committee” means a combination of two or more individuals, or a
 35 person other than an individual, that has:

36 (A) Received a contribution for the purpose of supporting or opposing a candidate, measure or
 37 political party; or

38 (B) Made an expenditure for the purpose of supporting or opposing a candidate, measure or
 39 political party.

40 (b) For purposes of paragraph (a)(B) of this subsection, an expenditure does not include:

41 (A) A contribution to a candidate or political committee that is required to report the contri-
 42 bution on a statement filed under ORS 260.057, 260.076 or 260.102 or a certificate filed under ORS
 43 260.112; or

44 (B) An independent expenditure for which a statement is required to be filed by a person under
 45 ORS 260.044 [(1)].

1 [(17)] (18) "Public office" means any national, state, county, district, city office or position, ex-
2 cept a political party office, that is filled by the electors.

3 [(18)] (19) "Recall petition" means a petition to recall a public officer for which a prospective
4 petition has been filed but that is not yet a measure.

5 [(19)] (20) "Referendum petition" means a petition to refer a measure for which a prospective
6 petition has been filed but that is not yet a measure.

7 [(20)] (21) "Regular district election" means the regular district election described in ORS
8 255.335.

9 [(21)] (22) "Slate mailer" means a mass mailing that supports or opposes a total of three or more
10 candidates or measures.

11 [(22)(a)] (23)(a) "Slate mailer organization" means, except as provided in paragraph (b) of this
12 subsection, any person who directly or indirectly:

13 (A) Is involved in the production of one or more slate mailers and exercises control over the
14 selection of the candidates and measures to be supported or opposed in the slate mailers; and

15 (B) Receives or is promised payment for producing one or more slate mailers or for endorsing
16 or opposing, or refraining from endorsing or opposing, a candidate or measure in one or more slate
17 mailers.

18 (b) Notwithstanding paragraph (a) of this subsection, "slate mailer organization" does not in-
19 clude:

20 (A) A political committee organized by a political party; or

21 (B) A political committee organized by the caucus of either the Senate or the House of Repre-
22 sentatives of the Legislative Assembly.

23 [(23)] (24) "State office" means the office of Governor, Secretary of State, State Treasurer, At-
24 torney General, Commissioner of the Bureau of Labor and Industries, Superintendent of Public In-
25 struction, state Senator, state Representative, judge or district attorney.

26 **SECTION 5.** ORS 260.041 is amended to read:

27 260.041. (1) Notwithstanding ORS 260.005 [(16)] (17) and except as provided in ORS 260.043, a
28 candidate shall designate a political committee as the candidate's principal campaign committee. A
29 candidate may designate only one political committee as the candidate's principal campaign com-
30 mittee.

31 (2) A political committee may not be designated as the principal campaign committee of more
32 than one candidate.

33 **SECTION 6.** ORS 260.044 is amended to read:

34 260.044. (1) A person shall file a statement of independent expenditures if the person makes in-
35 dependent expenditures in a total amount of more than \$100 in a calendar year. The statement shall
36 be filed with the Secretary of State.

37 (2) A statement described in subsection (1) of this section shall be filed not later than seven
38 calendar days after the total amount of independent expenditures exceeds \$100 in a calendar year.
39 The accounting period for the statement required by subsection (1) of this section begins on the date
40 that an independent expenditure is made. The statement shall specify the candidate or measure
41 supported or opposed by the independent expenditure. The secretary by rule shall prescribe the form
42 of the statement.

43 (3) Notwithstanding ORS 260.005 [(16)] (17), a person who solicits and receives a contribution
44 or contributions is a political committee and shall file a statement of organization under ORS
45 260.042 and the statements required by ORS 260.057 or 260.076.

(4) For purposes of this section:

(a) An independent expenditure does not include a contribution to a candidate or political committee that is required to report the contribution on a statement filed under ORS 260.057, 260.076 or 260.102 or a certificate filed under ORS 260.112;

(b) An independent expenditure does not include a contribution to a candidate who is not required to file a statement of organization under ORS 260.043; and

(c) A person is not a political committee under subsection (3) of this section if all contributions received by the person are:

(A) Designated to an identified candidate or political committee;

(B) Delivered by the person to the designated candidate or political committee not later than seven business days after the contribution is received; and

(C) Required to be reported as contributions by a candidate or political committee on a statement filed under ORS 260.057, 260.076 or 260.102 or a certificate filed under ORS 260.112.

SECTION 7. ORS 260.737 is amended to read:

260.737. (1) A slate mailer organization may not send a slate mailer unless all of the following are satisfied:

(a) The name and address of the slate mailer organization shall be shown on the outside of each piece of the slate mailer in a legible size and type.

(b) The following notice shall appear in a legible size and type at the top or bottom of the front side of the slate mailer:

NOTICE TO VOTERS

THIS DOCUMENT WAS NOT PREPARED BY A POLITICAL PARTY COMMITTEE OR PARTY CAUCUS COMMITTEE.

CANDIDATES AND MEASURES MARKED WITH AN * PAID FOR APPEARANCE IN THIS DOCUMENT.

(c) Each candidate that has paid to appear in the slate mailer and each measure on whose behalf payment has been received to appear in the slate mailer shall be designated by an asterisk of legible size immediately following the name of the candidate or the name or number of the measure in each instance where the name of the candidate or the name or number of the measure appears in the slate mailer.

(2) The Secretary of State by rule shall define “legible size” and “legible size and type” as used in this section.

(3) For purposes of ORS 260.735 and this section, “address” means the address of a residence, office, headquarters or similar location where the slate mailer organization or a responsible officer of the slate mailer organization may be conveniently located. If the slate mailer organization is a political committee, the address shall be the address of the political committee included in the statement of organization under ORS 260.039 or 260.042.

(4) The Secretary of State by rule may define the term “payment” as used in this section and ORS 260.005 [(22)] (23) and 260.735.

1 **SECTION 8.** Sections 2 and 3 of this 2009 Act and the amendments to ORS 260.005,
2 260.041, 260.044 and 260.737 by sections 4 to 7 of this 2009 Act apply to contributions and
3 expenditures made on or after the effective date of this 2009 Act.

4 **SECTION 9.** This 2009 Act does not take effect unless the amendment to the Oregon
5 Constitution proposed by House Joint Resolution 44 (2009) is approved by the people at the
6 next regular general election held throughout this state. This 2009 Act takes effect on the
7 effective date of that constitutional amendment.

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