

Enrolled
House Bill 2716

Sponsored by Representatives RAYFIELD, KENY-GUYER; Representatives EVANS, HOLVEY, MARSH, MITCHELL, NERON, NOSSE, PILUSO, POWER, PRUSAK, SANCHEZ, WILDE, WILLIAMS, Senators GELSER, MONNES ANDERSON, STEINER HAYWARD, TAYLOR (Pre-session filed.)

CHAPTER

AN ACT

Relating to campaign finance; creating new provisions; and amending ORS 260.995.

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

SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS chapter 260.

SECTION 2. (1) Except as otherwise provided by a local provision, a communication in support of or in opposition to a clearly identified candidate must state the name of the persons that paid for the communication.

(2) For the purpose of complying with subsection (1) of this section:

(a) Except as provided in paragraph (b) of this subsection, a communication in support of or in opposition to a clearly identified candidate by a political committee or petition committee must state:

(A) The name of the political committee or petition committee; and

(B) The names of the five persons that have made the largest aggregate contributions of \$10,000 or more to the committee in the election cycle in which the communication is made.

(b) A communication in support of or in opposition to a clearly identified candidate by an individual, a for-profit business entity or a candidate or the principal campaign committee of a candidate must state the name of the individual, for-profit business entity or candidate.

(c)(A) A communication in support of or in opposition to a clearly identified candidate by a person not described in paragraph (a) or (b) of this subsection must state:

(i) The name of the person; and

(ii) Except as provided in subparagraph (B) of this paragraph, the names of the five persons that have made the largest aggregate donations of \$10,000 or more to the person in the election cycle in which the communication is made.

(B) In identifying persons that have made aggregate donations of \$10,000 or more, a person described in this paragraph may exclude:

(i) Donations received from an affiliated charitable organization that is tax exempt under section 501(c)(3) of the Internal Revenue Code; and

(ii) Donations and grants received from foundations and other persons that may not be used to make a communication in support of or in opposition to a clearly identified candidate.

(d) Notwithstanding paragraphs (a) to (c) of this subsection, a digital communication may state only the name of the person that made the communication if the digital communication

includes an active link to a website that prominently displays the additional information required by this subsection.

(3) A person that makes communications in support of or in opposition to a clearly identified candidate must consider an anonymous donation of \$1,000 or more from a single person to be a donation that may not be used to make a communication in support of or in opposition to a clearly identified candidate.

(4)(a) If a person is required to disclose the names of five persons under subsection (2)(a)(B) or (c)(A)(ii) of this section and more than five persons qualify as having made the largest aggregate contributions or donations, the person shall disclose the five applicable persons whose contributions or donations were made closest to the date of initial printing or transmission of the communication.

(b) Except as provided in paragraph (c) of this subsection, the five persons required to be named under subsection (2)(a)(B) or (c)(A)(ii) of this section must be accurate as of 10 days before the most recent payment to print or transmit the communication.

(c) A person that both makes multiple digital communications in support of or in opposition to a clearly identified candidate and uses the method described in subsection (2)(d) of this section to meet the identification requirements of subsection (2)(a)(B) or (c)(A)(ii) of this section, may use one active link to the same website for all digital communications made by the person, provided that the information on the website is accurate as of 10 days before the most recent payment to print or transmit a communication.

(5) This section does not apply to:

(a) Candidates for federal office.

(b) Candidates other than those described in paragraph (a) of this subsection who are not required to use the electronic filing system adopted under ORS 260.057 to file statements of contributions received or expenditures made.

(c) Petition committees that are not required to use the electronic filing system adopted under ORS 260.057 to file statements of contributions received or expenditures made.

(d) Political committees that are not required to use the electronic filing system adopted under ORS 260.057 to file statements of contributions received or expenditures made.

(e) A person that makes independent expenditures and that is exempt under ORS 260.044 from being required to file statements of independent expenditures using the electronic filing system adopted under ORS 260.057.

(f) A communication that is excluded from the definition of "expenditure" under ORS 260.007.

(g) Items of de minimis value relating to a candidate, including but not limited to:

(A) Lawn signs, pins, pens and other similar items;

(B) Skywriting; or

(C) Wearable merchandise.

(h) Any other item that the Secretary of State by rule determines is too small to feasibly include the identifying information required by this section.

(6) The Secretary of State by rule shall prescribe the form of statements required on communications described in this section. Rules adopted under this subsection must ensure that the information required to be included in communications under this section is:

(a) In a font, size and color that are easy for an average person to read, if the communication appears in a print or digital format; and

(b) Clearly audible to the average person, if the communication appears in an audio format.

(7) As used in this section:

(a) "Clearly identified" has the meaning given that term in ORS 260.005 (10)(b).

(b)(A) Except as provided in subparagraph (B) of this paragraph, "communication in support of or in opposition to a clearly identified candidate" means:

(i)(I) The communication, when taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy for the election or defeat of a clearly identified candidate for nomination or election to public office; and

(II) The electoral portion of the communication is unmistakable, unambiguous and suggestive of only one meaning; or

(ii)(I) The communication involves aggregate expenditures by a person of more than the amount provided in ORS 260.044 (1);

(II) The communication refers to a clearly identified candidate who will appear on the ballot; and

(III) The communication is printed or transmitted to the relevant electorate within the time frame provided in ORS 260.005 (10)(c)(B)(iii).

(B)(i) "Communication in support of or in opposition to a clearly identified candidate" includes but is not limited to communications distributed via print, telephone, radio, television or the Internet.

(ii) "Communication in support of or in opposition to a clearly identified candidate" does not include newspaper editorials, printed advertisements with a fair market value of less than \$500 or communications made via telephone that have a fair market value of less than \$500.

(c)(A) "Donation" means the gift or transfer of moneys or any other item of value to a person subject to subsection (2)(c)(A) of this section, including any membership fees, dues or assessments.

(B) "Donation" does not include moneys or any other item of value received by a person subject to subsection (2)(c)(A) of this section in the ordinary course of a trade or business conducted by the person.

(d) "Election cycle" means the period of time starting on the day after the date of a general election and ending on the date of the next general election.

(e) "Local provision" means a charter provision, ordinance, resolution or other provision adopted by a city, county or other local government.

SECTION 3. ORS 260.995 is amended to read:

260.995. (1) Except as provided in subsection (2) of this section, following an investigation under ORS 260.345, the Secretary of State or Attorney General may impose a civil penalty not to exceed \$1,000 for each violation of any provision of Oregon Revised Statutes relating to the conduct of any election, any rule adopted by the secretary under ORS chapters 246 to 260 or any other matter preliminary to or relating to an election, for which a civil penalty is not otherwise provided.

(2) The secretary or the Attorney General may impose a civil penalty not to exceed:

(a) \$1,000 plus the amount converted to personal use for each violation of ORS 260.407;

(b) 150 percent of the total cost of printing, transmitting or distributing a communication in support of or in opposition to a clearly identified candidate if the disclosure requirements set forth in section 2 of this 2019 Act are not met; or

[(b)] (c) \$10,000 for each violation of ORS 260.555, 260.558, 260.575, 260.695 (1) or 260.715 (1) or section 1b, Article IV of the Oregon Constitution.

(3) Except as otherwise provided by this section, civil penalties under this section shall be imposed as provided in ORS 183.745. In addition to the requirements of ORS 183.745, the notice shall include:

(a) A statement of the authority and jurisdiction under which the hearing is to be held; and

(b) If the person is an agency, corporation or an unincorporated association, a statement that such person must be represented by an attorney licensed in Oregon, unless the person is a political committee which may be represented by any officer identified in the most recent statement of organization filed with the filing officer.

(4) A hearing on whether to impose a civil penalty and to consider circumstances in mitigation shall be held by the secretary or Attorney General:

(a) Upon request of the person against whom the penalty may be assessed, if the request is made not later than the 20th day after the date the person received notice sent under subsection (3) of this section; or

(b) Upon the secretary's or Attorney General's own motion.

(5) The person against whom a penalty may be assessed need not appear in person at a hearing held under this section, but instead may submit written testimony or other evidence, sworn to before a notary public, to the secretary or Attorney General for entry in the hearing record. The testimony or other evidence must be received by the secretary or Attorney General not later than three business days before the day of the hearing.

(6) All hearings under this section shall be held not later than 45 days after the deadline for the person against whom the penalty may be assessed to request a hearing. However, if requested by the person against whom the penalty may be assessed, a hearing under subsection (4) of this section shall be held not later than 60 days after the deadline for the person against whom the penalty may be assessed to request a hearing.

(7) The secretary or Attorney General shall issue an order not later than 90 days after a hearing or after the deadline for requesting a hearing if no hearing is held.

(8) All penalties recovered under this section shall be paid into the State Treasury and credited to the General Fund.

(9) In the case of a civil penalty imposed under this section for a violation of ORS 260.407, the person against whom the penalty is assessed:

(a) Is personally responsible for the payment of the civil penalty;

(b) Shall pay the civil penalty from personal funds of the person; and

(c) May not pay the civil penalty from contributions received by a candidate, a candidate's principal campaign committee, a political committee or a petition committee.

SECTION 4. It is the intent of the Legislative Assembly that all parts of this 2019 Act are independent and that if any part of this 2019 Act is held unconstitutional, all remaining parts shall remain in force.

SECTION 5. Section 2 of this 2019 Act and the amendments to ORS 260.995 by section 3 of this 2019 Act become operative on December 3, 2020.

Passed by House June 6, 2019

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 29, 2019

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2019

Approved:

.....M.,....., 2019

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2019

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Bev Clarno, Secretary of State