

House Bill 2983

Sponsored by Representatives RAYFIELD, KENY-GUYER, HERNANDEZ, Senator GOLDEN; Senators FAGAN, MANNING JR, TAYLOR

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**.

Requires covered nonprofit to file donor identification list that identifies donors that made donations above specified amount to covered nonprofit if covered nonprofit makes aggregate political expenditures above specified amount.

Permits covered nonprofit to establish separate campaign account. Limits disclosure requirement to donations above specified amount deposited into campaign account if conditions followed.

Regulates covered nonprofit acceptance and use of anonymous donations.

Establishes civil penalty for failure to comply with covered nonprofit disclosure requirements.

Permits Secretary of State or Attorney General, upon reasonable suspicion of violation, to examine accounts of covered nonprofit being investigated as result of elector filing complaint alleging violation of election law or rule.

Permits Attorney General, during investigation of election complaint, to issue subpoena to compel production of relevant documents or information.

A BILL FOR AN ACT

1
2 Relating to campaign finance; creating new provisions; and amending ORS 260.218, 260.232, 260.345
3 and 260.402.

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

5 **SECTION 1. Sections 2 and 3 of this 2019 Act are added to and made a part of ORS**
6 **chapter 260.**

7 **SECTION 2. (1) As used in this section and section 3 of this 2019 Act:**

8 (a) **“Anonymous donation” means a donation for which the covered nonprofit does not**
9 **possess the donor name or address that is required under subsection (2) of this section.**

10 (b) **“Covered nonprofit” means any not-for-profit corporation that is tax exempt under**
11 **section 501(c) of the Internal Revenue Code.**

12 (c)(A) **“Donation” means the gift or transfer of money or any other item of value to a**
13 **covered nonprofit, including any fee, dues or assessment paid for membership in a covered**
14 **nonprofit.**

15 (B) **“Donation” does not include money or any other item of value received by a covered**
16 **nonprofit in the ordinary course of a trade or business conducted by the covered nonprofit,**
17 **or received in the form of investments in the covered nonprofit.**

18 (d) **“Donor” means a person that makes a donation to a covered nonprofit.**

19 (e) **“Election cycle” means the period starting on the day after the date of a general**
20 **election and ending on the date of the next general election.**

21 (f) **“Electioneering threshold for a legislative race” means political expenditures made by**
22 **a covered nonprofit of less than \$50,000 for a particular seat of the Legislative Assembly.**

23 (g) **“Electioneering threshold for a statewide race” means political expenditures made by**
24 **a covered nonprofit of less than \$250,000 for a particular state office as defined in ORS**
25 **249.215.**

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 (h)(A) “Political expenditure” means:

2 (i) An expenditure that is influencing or attempting to influence the selection, nomi-
 3 nation, election or appointment of an individual to state or local public office; or

4 (ii) Except as otherwise provided, an expenditure that, if made by a candidate or political
 5 committee, would be required to be reported as an expenditure or independent expenditure.

6 (B) “Political expenditure” does not include:

7 (i) A communication by a covered nonprofit to its current members, stockholders or
 8 executive or administrative personnel, unless the covered nonprofit is a campaign committee
 9 or political committee; or

10 (ii) Any communication exempt from the definition of “expenditure” under ORS 260.007.

11 (2)(a) Except as provided in subsections (5) and (6) of this section:

12 (A) A covered nonprofit that exceeds the electioneering threshold for a legislative race
 13 during an election cycle shall file with the Secretary of State and the Department of Revenue
 14 a list containing the name and address of each donor that donated an aggregate amount of
 15 \$50,000 or more to the covered nonprofit during that election cycle; and

16 (B) A covered nonprofit that exceeds the electioneering threshold for a statewide race
 17 during an election cycle shall file with the Secretary of State and the Department of Revenue
 18 a list containing the name and address of each donor that donated an aggregate amount of
 19 \$250,000 or more to the covered nonprofit during that election cycle.

20 (b) A covered nonprofit that is required to file a donor identification list under this sec-
 21 tion shall file the list according to the time frame for filing a statement of independent
 22 expenditures under ORS 260.044, except that the time frame for filing starts on the day that
 23 the covered nonprofit makes a political expenditure that requires the covered nonprofit to
 24 make a filing under paragraph (a) of this subsection.

25 (c) Each donor identification list filed under this section must be signed and certified as
 26 true by an authorized representative of the covered nonprofit. Signatures must be supplied
 27 in the manner specified by the Secretary of State by rule.

28 (3)(a) A covered nonprofit that has exceeded the electioneering threshold for a legislative
 29 race during an election cycle and filed a donor identification list under subsection (2) of this
 30 section shall update the list by filing with the Secretary of State and the Department of
 31 Revenue the name and address of each subsequent donor that makes a donation or aggregate
 32 donations of \$50,000 or more to the covered nonprofit during that election cycle. An updated
 33 list filed under this paragraph must be filed according to the time frame for filing a state-
 34 ment of independent expenditures under ORS 260.044, except that the time frame for filing
 35 starts on the day that the dollar amount received by the covered nonprofit from a single
 36 donor not previously on the list, whether by single donation or aggregate donations, equals
 37 \$50,000 or more.

38 (b) A covered nonprofit that has exceeded the electioneering threshold for a statewide
 39 race during an election cycle and filed a donor identification list under subsection (2) of this
 40 section shall update the list by filing with the Secretary of State and the Department of
 41 Revenue the name and address of each subsequent donor that makes a donation or aggregate
 42 donations of \$250,000 or more to the covered nonprofit during that election cycle. An updated
 43 list filed under this paragraph must be filed according to the time frame for filing a state-
 44 ment of independent expenditures under ORS 260.044, except that the time frame for filing
 45 starts on the day that the dollar amount received by the covered nonprofit from a single

1 donor not previously on the list, whether by single donation or aggregate donations, equals
2 \$250,000 or more.

3 (4) The Secretary of State and the Department of Revenue shall, upon request, deliver
4 to any person the donor identification lists and updated donor identification lists filed under
5 this section. If the secretary or department receives a request under this subsection, the
6 secretary or department shall deliver the lists not later than five days after receiving the
7 request.

8 (5) A covered nonprofit may establish a separate campaign account for the covered
9 nonprofit to use to make political expenditures. If a covered nonprofit creates a separate
10 campaign account under this subsection:

11 (a) All moneys raised by the covered nonprofit for the purpose of engaging in political
12 activity must be deposited into the account; and

13 (b) All political expenditures made by the covered nonprofit must be made from the ac-
14 count.

15 (6)(a)(A) Except as provided in subparagraph (B) of this paragraph, if a covered nonprofit
16 establishes a separate campaign account under subsection (5) of this section and transfers
17 less than \$10,000 in any single year, and less than \$100,000 in the preceding 10-year period,
18 from a noncampaign account to the separate campaign account, the donor identification lists
19 that the covered nonprofit must file under this section are required to provide only infor-
20 mation for donors that:

21 (i) For a covered nonprofit required to file a list under subsection (2)(a)(A) of this sec-
22 tion, donate aggregate amounts of \$50,000 or more during the relevant election cycle and
23 whose donations are placed in the separate campaign account; and

24 (ii) For a covered nonprofit required to file a list under subsection (2)(a)(B) of this sec-
25 tion, donate aggregate amounts of \$250,000 or more during the relevant election cycle and
26 whose donations are placed in the separate campaign account.

27 (B) A covered nonprofit that establishes a separate campaign account under subsection
28 (5) of this section may make a onetime transfer of moneys of \$10,000 or more in any single
29 year, or \$100,000 or more over a 10-year period, from a noncampaign account to the separate
30 campaign account without including the names of the donors of the transferred moneys if:

31 (i) The transferred moneys were donated to the covered nonprofit before the effective
32 date of this 2019 Act; or

33 (ii) The covered nonprofit has previously disclosed the donor information of the trans-
34 ferred moneys.

35 (b) Except as provided in paragraph (a) of this subsection, if a covered nonprofit estab-
36 lishes a separate campaign account under subsection (5) of this section, the covered
37 nonprofit may not:

38 (A) Place aggregate anonymous donations of \$1,000 or more into the separate campaign
39 account; or

40 (B) Transfer \$10,000 or more in any single year, or have transferred \$100,000 or more in
41 the previous 10-year period, from an account that contains an aggregate amount of \$1,000
42 or more in anonymous donations to a separate campaign account established under sub-
43 section (5) of this section.

44 (c) If a covered nonprofit does not establish a separate campaign account under sub-
45 section (5) of this section, the covered nonprofit may not accept anonymous donations in an

1 aggregate amount of \$1,000 or more unless the covered nonprofit places and retains the
 2 anonymous donations in an account that contains no moneys that are used for the purpose
 3 of making a political expenditure.

4 (7) The Secretary of State may enact rules necessary to implement this section.

5 **SECTION 3.** (1) When conducting an investigation under ORS 260.345 of a written com-
 6 plaint alleging that a violation of an election law or rule adopted by the Secretary of State
 7 under ORS chapters 246 to 260 has occurred, the secretary or the Attorney General may,
 8 upon reasonable suspicion that a violation has occurred and in addition to any other action
 9 permitted by law, examine the accounts of a covered nonprofit alleged to have committed the
 10 violation.

11 (2) When investigating the accounts of a covered nonprofit under this section, the Sec-
 12 retary of State or the Attorney General may require the covered nonprofit to provide access
 13 to bank account records and other documentation the secretary or Attorney General deter-
 14 mines is necessary to successfully conduct the investigation. The requirement to provide
 15 access to bank account records and other documentation may be enforced by writ of
 16 mandamus issued by any court of competent jurisdiction.

17 (3) Bank account records and other documentation provided by a covered nonprofit to the
 18 Secretary of State or Attorney General under this section may be used only for purposes of
 19 the investigation and, in order to protect the confidentiality of sensitive information, may
 20 not be disclosed as a public record under ORS 192.311 to 192.478.

21 (4) The Secretary of State by rule shall designate the period of time within which a cov-
 22 ered nonprofit must provide access to bank account records and other documentation if re-
 23 quired to do so under this section. The secretary or Attorney General may impose a civil
 24 penalty under ORS 260.995 against a person that fails to timely provide the access to bank
 25 account records and other documentation required under this section.

26 **SECTION 4.** ORS 260.402 is amended to read:

27 260.402. (1) A person may not **directly or indirectly reimburse a person for making a con-**
 28 **tribution or donation, or** make a contribution **or donation** in any name other than that of the
 29 person *[who]* **that** in truth provides the contribution **or donation**, to:

30 (a) Any other person, relating to a nomination or election of any candidate or the support of
 31 or opposition to any measure;

32 (b) Any political committee; *[or]*

33 (c) **Any covered nonprofit required to file a list under section 2 of this 2019 Act; or**

34 *[(c)]* (d) A petition committee required to file a statement under ORS 260.118.

35 (2) Except as provided in subsection (3) of this section, a person, political committee, **covered**
 36 **nonprofit** or petition committee may not knowingly receive a contribution **or donation** prohibited
 37 under subsection (1) of this section or enter or cause the contribution **or donation** to be entered in
 38 accounts or records in another name than that of the person *[by whom it was]* **that** actually pro-
 39 vided **the contribution or donation**.

40 (3) If a person receives a contribution from a political committee, the person may enter the
 41 contribution into accounts or records as received from the political committee.

42 (4) **As used in this section, “covered nonprofit” and “donation” have the meanings given**
 43 **those terms in section 2 of this 2019 Act.**

44 **SECTION 5.** ORS 260.232 is amended to read:

45 260.232. (1) The Secretary of State may impose a civil penalty as provided in this section, in

1 addition to any other penalty that may be imposed, for:

2 (a) Failure to file a statement, **list** or certificate required to be filed under ORS 260.044, 260.057,
3 260.076, 260.078, 260.083, 260.112 or 260.118 **or section 2 of this 2019 Act**.

4 (b) Failure to include in a statement **or list** filed under ORS 260.044, 260.057, 260.076, 260.078,
5 260.083, 260.112 or 260.118 **or section 2 of this 2019 Act** the information required under ORS
6 260.044, 260.057, 260.076, 260.083 or 260.118 **or section 2 of this 2019 Act**.

7 (2)(a) If a person required to file has not filed a statement, **list** or certificate complying with
8 applicable provisions of ORS 260.044, 260.057, 260.076, 260.078, 260.083, 260.085, 260.112 or 260.118
9 **or section 2 of this 2019 Act** within the time specified in ORS 260.044, 260.057, 260.076, 260.078 or
10 260.118 **or section 2 of this 2019 Act**, the Secretary of State by first class mail or electronically
11 shall notify the person or elector designated under ORS 260.042 or 260.118 that a penalty may be
12 imposed and that the person has 20 days from the service date on the notice to request a hearing
13 before the Secretary of State.

14 (b) If the person required to file is a candidate or the principal campaign committee of a can-
15 didate, the Secretary of State shall send the notice described in paragraph (a) of this subsection by
16 first class mail or electronically to the candidate. The notice shall be used for purposes of deter-
17 mining the deadline for requesting a hearing under subsection (3) of this section.

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

20 (a) Upon request of the person against whom the penalty may be assessed, if the request is made
21 not later than the 20th day from the service date on the notice sent under subsection (2) of this
22 section;

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

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

26 (4) A hearing under subsection (3) of this section shall be held not later than 45 days after the
27 deadline for the person against whom the penalty may be assessed to request a hearing. However,
28 if requested by the person against whom the penalty may be assessed, a hearing under subsection
29 (3) of this section shall be held not later than 60 days after the deadline for the person against whom
30 the penalty may be assessed to request a hearing.

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

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

38 (7)(a) **Except as provided in paragraph (b) of this subsection**, a civil penalty imposed under
39 this section may not be more than the following:

40 [(a)] (A) For failure to file a statement or certificate required to be filed under ORS 260.044,
41 260.057, 260.076, 260.078, 260.083, 260.112 or 260.118, 10 percent of the total amount of the contri-
42 bution or expenditure required to be included in the statement or certificate; or

43 [(b)] (B) For each failure to include in a statement filed under ORS 260.044, 260.057, 260.076,
44 260.078, 260.083, 260.112 or 260.118 the information required under ORS 260.044, 260.057, 260.076,
45 260.083 or 260.118, 10 percent of the total amount of the contribution or expenditure required to be

1 included in the statement.

2 **(b)(A) For failure to file a list required to be filed under section 2 of this 2019 Act, the**
3 **Secretary of State shall impose a penalty of \$500.**

4 **(B) For each failure to include in a list filed under section 2 of this 2019 Act the infor-**
5 **mation required under section 2 of this 2019 Act, the Secretary of State shall impose a pen-**
6 **alty of \$500.**

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

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

11 **SECTION 6.** ORS 260.218 is amended to read:

12 260.218. (1) The Secretary of State, **or the Attorney General acting under ORS 260.345**, may
13 issue subpoenas to compel the production of records, documents, books, papers, memoranda or other
14 information necessary to determine compliance with the provisions of this chapter.

15 (2) If a person fails to comply with any subpoena issued under subsection (1) of this section, a
16 judge of the circuit court of any county, on application of the Secretary of State **or Attorney**
17 **General**, shall compel obedience by proceedings for contempt as in the case of disobedience of the
18 requirements of a subpoena issued from the circuit court.

19 **SECTION 7.** ORS 260.345 is amended to read:

20 260.345. (1) Any elector may file with any filing officer a written complaint alleging that a vio-
21 lation of an election law or rule adopted by the Secretary of State under ORS chapters 246 to 260
22 has occurred and stating the reason for believing that the violation occurred and any evidence re-
23 lating to it. A complaint and any evidence relating to it may be filed electronically. A complaint
24 alleging a violation involving the Secretary of State, a candidate for the office of Secretary of State,
25 or any political committee or person supporting the Secretary of State or a candidate for the office
26 of Secretary of State may be filed with the Attorney General. The Secretary of State or Attorney
27 General [*shall*] **may** not accept an anonymous complaint.

28 (2) The Secretary of State by rule shall prescribe the procedure for processing a complaint filed
29 with any person other than the Secretary of State. If the complaint concerns the Secretary of State,
30 any candidate for the office of the Secretary of State, or any political committee or person sup-
31 porting the candidacy of the Secretary of State or of another person for the office of Secretary of
32 State, the complaint and any additional information relating to the complaint shall be sent to the
33 Attorney General.

34 (3) Upon receipt of a complaint under subsection (1) or (2) of this section the Secretary of State
35 or Attorney General immediately shall examine the complaint to determine whether a violation of
36 an election law or rule has occurred and shall make any investigation the Secretary of State or
37 Attorney General considers necessary, **including but not limited to conducting an examination**
38 **of the bank account records and other documentation of a covered nonprofit in the manner**
39 **set forth in section 3 of this 2019 Act.** Except as provided in this subsection, within 48 hours of
40 receiving a complaint under subsection (1) or (2) of this section, the Secretary of State or Attorney
41 General shall notify the person who is the subject of the complaint that a complaint has been re-
42 ceived. If the Secretary of State or Attorney General receives a complaint or complaints involving
43 25 or more individuals, political committees or petition committees in any 24-hour period, the Sec-
44 retary of State or Attorney General need not notify the persons who are the subjects of those
45 complaints within 48 hours of receiving the complaints but shall notify those persons not later than

1 10 business days after receiving the complaint or complaints.

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

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

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

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

18 (6) Upon receipt of a complaint under subsection (1) or (2) of this section involving an alleged
19 violation of an election law or rule not subject to a penalty under ORS 260.993, the Attorney Gen-
20 eral shall examine the complaint to determine whether a violation of an election law or rule has
21 occurred and shall make any investigation the Attorney General considers necessary, **including but**
22 **not limited to conducting an examination of the bank account records and other documen-**
23 **tation of a covered nonprofit in the manner set forth in section 3 of this 2019 Act.** If the At-
24 torney General believes after an investigation that a violation of an election law or rule has
25 occurred, the Attorney General may impose a civil penalty under ORS 260.995.

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

30 (8) A filing officer having reason to believe that a violation of an election law or rule has oc-
31 curred shall proceed promptly as though the officer had received a complaint. Except as provided
32 in ORS 260.234, a filing officer shall proceed under this subsection no later than two years following
33 the election at which a violation of an election law or rule is alleged to have occurred, or two years
34 following the date the violation of an election law or rule is alleged to have occurred, whichever is
35 later. If a filing officer has not proceeded within two years because of fraud, deceit, misleading
36 representation or the filing officer could not have reasonably discovered the alleged violation, the
37 filing officer shall proceed no later than five years following the election at which a violation of an
38 election law or rule is alleged to have occurred, or five years following the date the violation of an
39 election law or rule is alleged to have occurred, whichever is later.

40 (9) **As used in this section, “covered nonprofit” has the meaning given that term in sec-**
41 **tion 2 of this 2019 Act.**

42 **SECTION 8. Sections 2 and 3 of this 2019 Act and the amendments to ORS 260.218,**
43 **260.232, 260.345 and 260.402 by sections 4 to 7 of this 2019 Act apply to all donations made or**
44 **transferred, and investigations of donations conducted, on or after the effective date of this**
45 **2019 Act.**

