

B-Engrossed
Senate Bill 478

Ordered by the House May 30
Including Senate Amendments dated April 23 and House Amendments
dated May 30

Sponsored by Senator GELSER, Representative POWER, Senator KNOPP (Presession filed.)

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.

Prohibits campaign moneys and public moneys from being used to make payments in connection with nondisclosure agreement relating to workplace harassment. Declares void and unenforceable any nondisclosure agreement entered into with use of prohibited moneys. Establishes civil penalty for using prohibited moneys to make payments in connection with nondisclosure agreement of up to two times amount of penalty provision for violating nondisclosure agreement that is contained within nondisclosure agreement.

Prohibits [*public official*] **holder of public office** or candidate from using moneys received from third parties to make payments in connection with nondisclosure agreement relating to harassment in workplace, if alleged harassment occurred when [*public official*] **holder of public office** or candidate was acting as [*public official*] **holder of public office** or candidate.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to nondisclosure agreements; creating new provisions; amending ORS 244.350, 260.407 and
3 260.995; and declaring an emergency.

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

5 **SECTION 1.** ORS 260.407 is amended to read:

6 260.407. (1)(a) Except as provided in paragraph (b) of this subsection, amounts received as con-
7 tributions by a candidate, the principal campaign committee of a candidate or the principal cam-
8 paign committee of a holder of public office may be:

9 (A) Used to defray any expenses incurred in connection with the recipient's duties as a holder
10 of public office;

11 (B) Transferred to any national, state or local political committee of any political party;

12 (C) Contributed to any organization described in section 170(c) of the Internal Revenue Code
13 or to any charitable corporation as defined in ORS 128.620; or

14 (D) Used for any other lawful purpose.

15 (b) Amounts received as contributions by a candidate, the principal campaign committee of a
16 candidate for public office or the principal campaign committee of a holder of public office may not
17 be:

18 (A) Converted by any person to any personal use other than to defray any expenses incurred in
19 connection with the person's duties as a holder of public office or to repay to a candidate any loan
20 the proceeds of which were used in connection with the candidate's campaign;

21 (B) Except as provided in this subparagraph, used to pay any money award as defined in ORS
22 18.005 included as part of a judgment in a civil or criminal action or any civil penalty imposed by

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 an agency as defined in ORS 183.310 or by a local government as defined in ORS 174.116. Contri-
2 butions described in this paragraph may be used to pay a civil penalty imposed under this chapter,
3 other than a civil penalty imposed for a violation of this section or ORS 260.409; [or]

4 (C) Except as provided in this subparagraph, used to pay any legal expenses incurred by the
5 candidate or public official in any civil, criminal or other legal proceeding or investigation that re-
6 lates to or arises from the course and scope of the duties of the person as a candidate or public
7 official. Contributions described in this paragraph may be used to pay legal expenses incurred by
8 the candidate or public official in connection with a legal proceeding brought under ORS chapters
9 246 to 260, other than a proceeding brought under this section or ORS 260.409[.]; **or**

10 **(D) Used to make payments in connection with a nondisclosure agreement relating to**
11 **workplace harassment. A nondisclosure agreement made in violation of this subparagraph is**
12 **void and may not be enforced by a court of this state.**

13 (2)(a) Except as provided in paragraph (b) of this subsection, amounts received as contributions
14 by a political committee that is not a principal campaign committee may be:

15 (A) Used to repay to the political committee any loan the proceeds of which were used in con-
16 nection with the campaign;

17 (B) Transferred to any national, state or local political committee of any political party;

18 (C) Contributed to any organization described in section 170(c) of the Internal Revenue Code
19 or to any charitable corporation as defined in ORS 128.620; or

20 (D) Used for any other lawful purpose.

21 (b) Amounts received as contributions by the political committee may not be:

22 (A) Converted by any person to any personal use;

23 (B) Except as provided in this subparagraph, used to pay any money award as defined in ORS
24 18.005 included as part of a judgment in a civil or criminal action or any civil penalty imposed by
25 an agency as defined in ORS 183.310 or by a local government as defined in ORS 174.116. Contri-
26 butions described in this subsection may be used to pay a civil penalty imposed under this chapter,
27 other than a civil penalty imposed for a violation of this section or ORS 260.409; [or]

28 (C) Except as provided in this subparagraph, used to pay any legal expenses incurred by a
29 treasurer or director of a political committee in any civil, criminal or other legal proceeding or in-
30 vestigation that relates to or arises from the course and scope of the duties of the person as a
31 treasurer or director. Contributions described in this subsection may be used to pay legal expenses
32 incurred by a treasurer or director in connection with a legal proceeding brought under ORS
33 chapters 246 to 260, other than a proceeding brought under this section or ORS 260.409[.]; **or**

34 **(D) Used to make payments in connection with a nondisclosure agreement relating to**
35 **workplace harassment. A nondisclosure agreement made in violation of this subparagraph is**
36 **void and may not be enforced by a court of this state.**

37 (3)(a) Except as provided in paragraph (b) of this subsection, amounts received as contributions
38 by a chief petitioner or treasurer of a petition committee may be:

39 (A) Used to repay to the chief petitioner any loan the proceeds of which were used in con-
40 nection with the initiative, referendum or recall petition;

41 (B) Transferred to any national, state or local political committee of any political party;

42 (C) Contributed to any organization described in section 170(c) of the Internal Revenue Code
43 or to any charitable corporation as defined in ORS 128.620; or

44 (D) Used for any other lawful purpose.

45 (b) Amounts received as contributions by a chief petitioner or treasurer of a petition committee

1 may not be:

2 (A) Converted by any person to any personal use;

3 (B) Except as provided in this subparagraph, used to pay any money award as defined in ORS
4 18.005 included as part of a judgment in a civil or criminal action or any civil penalty imposed by
5 an agency as defined in ORS 183.310 or by a local government as defined in ORS 174.116. Contri-
6 butions described in this subsection may be used to pay a civil penalty imposed under this chapter,
7 other than a civil penalty imposed for a violation of this section or ORS 260.409; [or]

8 (C) Except as provided in this subparagraph, used to pay any legal expenses incurred by a chief
9 petitioner or the treasurer of a petition committee in any civil, criminal or other legal proceeding
10 or investigation that relates to or arises from the course and scope of the duties of the person as
11 a chief petitioner or treasurer. Contributions described in this subsection may be used to pay legal
12 expenses incurred by a chief petitioner or treasurer in connection with a legal proceeding brought
13 under ORS chapters 246 to 260, other than a proceeding brought under this section or ORS
14 260.409[.]; or

15 **(D) Used to make payments in connection with a nondisclosure agreement relating to**
16 **workplace harassment. A nondisclosure agreement made in violation of this subparagraph is**
17 **void and may not be enforced by a court of this state.**

18 (4) As used in this section:

19 (a) “Contribution” and “expenditure” include a contribution or expenditure to or on behalf of
20 an initiative, referendum or recall petition.

21 (b) “Funds donated” means all funds, including but not limited to gifts, loans, advances, credits
22 or deposits of money that are donated for the purpose of supporting the activities of a holder of
23 public office. “Funds donated” does not mean funds appropriated by the Legislative Assembly or
24 another similar public appropriating body or personal funds of the office holder donated to an ac-
25 count containing only those personal funds.

26 (c) “Public office” does not include national or political party office.

27 **(d) “Workplace harassment” means conduct that constitutes discrimination prohibited**
28 **by ORS 659A.030, including conduct that constitutes sexual assault as defined in ORS**
29 **181A.323.**

30 **SECTION 2. Section 3 of this 2019 Act is added to and made a part of ORS chapter 244.**

31 **SECTION 3. (1) A holder of public office or candidate may not:**

32 **(a) Use public moneys to make payments in connection with a nondisclosure agreement**
33 **relating to workplace harassment; or**

34 **(b) Use moneys received from a third party to make payments in connection with a**
35 **nondisclosure agreement relating to workplace harassment if the alleged harassment oc-**
36 **curred when the holder of public office or candidate was acting as a holder of public office**
37 **or candidate.**

38 **(2) A nondisclosure agreement made in violation of this section is void and may not be**
39 **enforced by a court of this state.**

40 **(3) As used in this section:**

41 **(a) “Payments in connection with a nondisclosure agreement” includes any form of con-**
42 **sideration provided in exchange for the silence of an individual on issues relating to**
43 **workplace harassment, including but not limited to:**

44 **(A) Money;**

45 **(B) Stock, personal property or other items with a resale value;**

1 (C) Severance pay or benefits for an individual who resigned or was fired from a place
2 of employment without cause;

3 (D) The promise of a positive reference or assistance in obtaining future employment in
4 a position in which the individual's salary is paid for with public moneys;

5 (E) The promise of a bonus payment of moneys in addition to the individual's salary;

6 (F) Alternative work arrangements that have the effect of reducing the amount of work
7 required to be performed by the individual, or of removing the individual from the workplace;
8 or

9 (G) Any agreement that terminates the employment of the individual and includes a
10 waiver of past or future claims against the holder of public office, the public body or any
11 public employee.

12 (b) "Public office" has the meaning given that term in ORS 260.005.

13 (c) "Workplace harassment" means conduct that constitutes discrimination prohibited
14 by ORS 659A.030, including conduct that constitutes sexual assault as defined in ORS
15 181A.323.

16 (4) This section does not prevent a holder of public official from using public moneys to
17 make payments in connection with the receipt of a legally required confidential or privileged
18 report of discrimination, sexual assault or harassment, including workplace harassment.

19 SECTION 4. Section 5 of this 2019 Act is added to and made a part of ORS chapter 260.

20 SECTION 5. (1) In addition to the requirements set forth in ORS 260.407, a political
21 committee or petition committee may not provide any form of consideration in connection
22 with a nondisclosure agreement relating to workplace harassment.

23 (2) As used in this section:

24 (a) "Consideration in connection with a nondisclosure agreement" includes any form of
25 consideration provided in exchange for the silence of an individual on issues relating to
26 workplace harassment, including but not limited to:

27 (A) Money;

28 (B) Stock, personal property or other items with a resale value;

29 (C) Severance pay or benefits for an individual who resigned or was fired from a place
30 of employment without cause;

31 (D) The promise of a positive reference or assistance in obtaining future employment in
32 a position in which the individual's salary is paid for with public moneys;

33 (E) The promise of a bonus payment of moneys in addition to the individual's salary;

34 (F) Alternative work arrangements that have the effect of reducing the amount of work
35 required to be performed by the individual, or of removing the individual from the workplace;
36 or

37 (G) Any agreement that terminates the employment of the individual and includes a
38 waiver of past or future claims against the holder of public office, the public body or any
39 public employee.

40 (b) "Workplace harassment" means conduct that constitutes discrimination prohibited
41 by ORS 659A.030, including conduct that constitutes sexual assault as defined in ORS
42 181A.323.

43 SECTION 6. ORS 260.995 is amended to read:

44 260.995. (1) Except as provided in subsection (2) of this section, following an investigation under
45 ORS 260.345, the Secretary of State or Attorney General may impose a civil penalty not to exceed

1 \$1,000 for each violation of any provision of Oregon Revised Statutes relating to the conduct of any
2 election, any rule adopted by the secretary under ORS chapters 246 to 260 or any other matter
3 preliminary to or relating to an election, for which a civil penalty is not otherwise provided.

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

5 (a)(A) **Except as provided in subparagraph (B) of this paragraph**, \$1,000 plus the amount
6 converted to personal use for each violation of ORS 260.407;

7 **(B) Two times the amount of the penalty provision for violating a nondisclosure agree-**
8 **ment that is contained within each nondisclosure agreement entered into in violation of ORS**
9 **260.407 or section 5 of this 2019 Act; or**

10 (b) \$10,000 for each violation of ORS 260.555, 260.558, 260.575, 260.695 (1) or 260.715 (1) or sec-
11 tion 1b, Article IV of the Oregon Constitution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **SECTION 7.** ORS 244.350 is amended to read:

2 244.350. (1) The Oregon Government Ethics Commission may impose civil penalties not to ex-
3 ceed:

4 (a) Except as provided in paragraphs (b), (c) **and (d)** [*and (c)*] of this subsection, \$5,000 for vio-
5 lation of any provision of this chapter or any resolution adopted under ORS 244.160.

6 (b) \$25,000 for violation of ORS 244.045.

7 (c) \$10,000 for willfully violating ORS 244.040.

8 **(d) Two times the amount of the penalty provision for violating a nondisclosure agree-**
9 **ment that is contained within each nondisclosure agreement entered into in violation of**
10 **section 3 of this 2019 Act.**

11 (2)(a) Except as provided in paragraph (b) of this subsection, the commission may impose civil
12 penalties not to exceed \$1,000 for violation of any provision of ORS 192.660.

13 (b) A civil penalty may not be imposed under this subsection if the violation occurred as a result
14 of the governing body of the public body acting upon the advice of the public body's counsel.

15 (3) The commission may impose civil penalties not to exceed \$250 for violation of ORS 293.708.
16 A civil penalty imposed under this subsection is in addition to and not in lieu of a civil penalty that
17 may be imposed under subsection (1) of this section.

18 (4)(a) The commission may impose civil penalties on a person who fails to file the statement
19 required under ORS 244.050 or 244.217. In enforcing this subsection, the commission is not required
20 to follow the procedures in ORS 244.260 before finding that a violation of ORS 244.050 or 244.217
21 has occurred.

22 (b) Failure to file the required statement in timely fashion is prima facie evidence of a violation
23 of ORS 244.050 or 244.217.

24 (c) The commission may impose a civil penalty of \$10 for each of the first 14 days the statement
25 is late beyond the date set by law, or by the commission under ORS 244.050, and \$50 for each day
26 thereafter. The maximum penalty that may be imposed under this subsection is \$5,000.

27 (5) In lieu of or in conjunction with finding a violation of law or any resolution or imposing a
28 civil penalty under this section, the commission may issue a written letter of reprimand, explanation
29 or education.

30 **SECTION 8. This 2019 Act being necessary for the immediate preservation of the public**
31 **peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect**
32 **on its passage.**