

# Senate Bill 916

Sponsored by Senators GELSER, GOLDEN

## 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 expenditures from caucus political committees that are coordinated with candidates for office of state Senator or state Representative from qualifying as independent expenditures.

Requires caucus political committee to receive signed consent form from candidate for office of state Senator or state Representative before caucus political committee makes expenditure other than independent expenditure in support of or in opposition to candidate.

Permits Secretary of State to impose fine of up to \$10,000 for each instance of caucus political committee incorrectly identifying independent expenditure as expenditure made in coordination with candidate for office of state Senator or state Representative.

Requires independent expenditures in support of or in opposition to clearly identified candidate to include statement "This independent message was paid for and produced without the knowledge, consent or cooperation of any candidate."

## A BILL FOR AN ACT

1  
2 Relating to political communications; creating new provisions; and amending ORS 260.005 and  
3 260.232.

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) Notwithstanding ORS 260.005 (10), an independent expenditure does not**  
8 **include any expenditure by:**

9 (a) **A political committee affiliated with a caucus in the Senate that is made for a com-**  
10 **munication in support of or in opposition to a clearly identified candidate for the office of**  
11 **state Senator with the cooperation or with the prior consent of, or in consultation with, or**  
12 **at the request or suggestion of, a candidate for the office of state Senator or any agent or**  
13 **authorized committee of the candidate.**

14 (b) **A political committee affiliated with a caucus in the House of Representatives that**  
15 **is made for a communication in support of or in opposition to a clearly identified candidate**  
16 **for the office of state Representative with the cooperation or with the prior consent of, or**  
17 **in consultation with, or at the request or suggestion of, a candidate for the office of state**  
18 **Representative or any agent or authorized committee of the candidate.**

19 (2)(a) **A political committee affiliated with a caucus in the Senate must receive a signed**  
20 **consent form from a candidate for the office of state Senator before making an expenditure**  
21 **other than an independent expenditure in support of, or in opposition to the opponent of, the**  
22 **candidate.**

23 (b) **A political committee affiliated with a caucus in the House of Representatives must**  
24 **receive a signed consent form from a candidate for the office of state Representative before**  
25 **making an expenditure other than an independent expenditure in support of, or in opposition**  
26 **to the opponent of, the candidate.**

**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 (c) The Secretary of State shall create by rule the consent forms described in this sub-  
2 section.

3 (3) As used in this section:

4 (a) "Agent" means any person who has:

5 (A) Actual oral or written authority, either express or implied, to make or to authorize  
6 the making of expenditures on behalf of a candidate for the office of state Senator or state  
7 Representative; or

8 (B) Been placed in a position within the campaign organization where it would reasonably  
9 appear that in the ordinary course of campaign-related activities the person may authorize  
10 expenditures.

11 (b) "Communication in support of or in opposition to a clearly identified candidate"  
12 means:

13 (A)(i) The communication, taken in its context, clearly and unambiguously urges the  
14 election or defeat of a clearly identified candidate for nomination or election to public office;

15 (ii) The communication, as a whole, seeks action rather than simply conveying informa-  
16 tion; and

17 (iii) It is clear what action the communication advocates; or

18 (B)(i) The communication contains aggregate expenditures of more than \$750 by a person;

19 (ii) The communication refers to a clearly identified candidate who will appear on the  
20 ballot or to a political party; and

21 (iii) The communication is published and disseminated to the relevant electorate within  
22 30 calendar days before a primary election or 60 calendar days before a general election.

23 (c) "Made with the cooperation or with the prior consent of, or in consultation with, or  
24 at the request or suggestion of, a candidate or any agent or authorized committee of the  
25 candidate":

26 (A) Means made under or with any arrangement, coordination or direction by a candidate  
27 for state Senator or state Representative, prior to the publication, distribution, display or  
28 broadcast of a communication in support of or in opposition to a clearly identified candidate.  
29 An expenditure shall be presumed to be so made when it is:

30 (i) Based on information about the plans, projects or needs of the candidate, and provided  
31 to the expending person by the candidate or by the candidate's agent, with a view toward  
32 having an expenditure made; or

33 (ii) Made by or through any person who is or has been authorized to raise or expend  
34 funds, who is or has been an officer of a political committee authorized by the candidate, or  
35 who is or has been receiving any form of compensation or reimbursement from the candi-  
36 date.

37 (B) Does not mean the provision to the expending person upon request of a copy of this  
38 chapter or any rules adopted by the Secretary of State relating to independent expenditures.

39 **SECTION 3.** (1) Each communication in support of or in opposition to a clearly identified  
40 candidate that qualifies as an independent expenditure must include the statement that "This  
41 independent message was paid for and produced without the knowledge, consent or cooper-  
42 ation of any candidate."

43 (2) This section does not apply to:

44 (a) Communications in support of or in opposition to candidates for federal office.

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

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

2 (B) Skywriting; or

3 (C) Wearable merchandise.

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

6 (3) As used in this section:

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

8 (b)(A) Except as provided in subparagraph (B) of this paragraph, "communication in  
9 support of or in opposition to a clearly identified candidate" has the meaning given that term  
10 in section 2 of this 2019 Act.

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

14 (ii) "Communication in support of or in opposition to a clearly identified candidate" does  
15 not include newspaper editorials, printed advertisements with a fair market value of less  
16 than \$500 or communications made via telephone that have a fair market value of less than  
17 \$500.

18 **SECTION 4.** ORS 260.005, as amended by section 14, chapter 70, Oregon Laws 2018, is amended  
19 to read:

20 260.005. As used in this chapter:

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

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

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

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

34 (b) For purposes of this section and ORS 260.035 to 260.156, "candidate" does not include a  
35 candidate for the office of precinct committeeperson.

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

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

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

45 (A) For the purpose of influencing an election for public office or an election on a measure, or

1 of reducing the debt of a candidate for nomination or election to public office or the debt of a pol-  
2 itical committee; or

3 (B) To or on behalf of a candidate, political committee or measure; and

4 (b) The excess value of a contribution made for compensation or consideration of less than  
5 equivalent value.

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

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

9 (b) Acts jointly with a candidate or controlled committee.

10 (5) "Controlled directly or indirectly by a candidate" means:

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

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

16 (6) "County clerk" means the county clerk or the county official in charge of elections.

17 (7) "Elector" means an individual qualified to vote under Article II, section 2, of the Oregon  
18 Constitution.

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

26 (9) "Filing officer" means:

27 (a) The Secretary of State:

28 (A) Regarding a candidate for public office;

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

30 (C) Regarding any measure; or

31 (D) Regarding any political committee.

32 (b) In the case of an irrigation district formed under ORS chapter 545, "filing officer" means:

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

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

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

40 (10) **Except as provided in section 2 of this 2019 Act**, "independent expenditure" means an  
41 expenditure by a person for a communication in support of or in opposition to a clearly identified  
42 candidate or measure that is not made with the cooperation or with the prior consent of, or in  
43 consultation with, or at the request or suggestion of, a candidate or any agent or authorized com-  
44 mittee of the candidate, or any political committee or agent of a political committee supporting or  
45 opposing a measure. For purposes of this subsection:

- 1 (a) “Agent” means any person who has:
- 2 (A) Actual oral or written authority, either express or implied, to make or to authorize the
- 3 making of expenditures on behalf of a candidate or on behalf of a political committee supporting or
- 4 opposing a measure; or
- 5 (B) Been placed in a position within the campaign organization where it would reasonably ap-
- 6 pear that in the ordinary course of campaign-related activities the person may authorize expen-
- 7 ditures.
- 8 (b)(A) “Clearly identified” means, with respect to candidates:
- 9 (i) The name of the candidate involved appears;
- 10 (ii) A photograph or drawing of the candidate appears; or
- 11 (iii) The identity of the candidate is apparent by unambiguous reference.
- 12 (B) “Clearly identified” means, with respect to measures:
- 13 (i) The ballot number of the measure appears;
- 14 (ii) A description of the measure’s subject or effect appears; or
- 15 (iii) The identity of the measure is apparent by unambiguous reference.
- 16 (c) “Communication in support of or in opposition to a clearly identified candidate or measure”
- 17 means:
- 18 (A)(i) The communication, taken in its context, clearly and unambiguously urges the election or
- 19 defeat of a clearly identified candidate for nomination or election to public office, or the passage
- 20 or defeat of a clearly identified measure;
- 21 (ii) The communication, as a whole, seeks action rather than simply conveying information; and
- 22 (iii) It is clear what action the communication advocates; or
- 23 (B)(i) The communication contains aggregate expenditures of more than \$750 by a person;
- 24 (ii) The communication refers to a clearly identified candidate who will appear on the ballot or
- 25 to a political party; and
- 26 (iii) The communication is published and disseminated to the relevant electorate within 30 cal-
- 27 endar days before a primary election or 60 calendar days before a general election.
- 28 (d) “Made with the cooperation or with the prior consent of, or in consultation with, or at the
- 29 request or suggestion of, a candidate or any agent or authorized committee of the candidate, or any
- 30 political committee or agent of a political committee supporting or opposing a measure”:
- 31 (A) Means any arrangement, coordination or direction by the candidate or the candidate’s agent,
- 32 or by any political committee or agent of a political committee supporting or opposing a measure,
- 33 prior to the publication, distribution, display or broadcast of *[the]* a communication **in support of**
- 34 **or in opposition to a clearly identified candidate or measure**. An expenditure shall be presumed
- 35 to be so made when it is:
- 36 (i) Based on information about the plans, projects or needs of the candidate, or of the political
- 37 committee supporting or opposing a measure, and provided to the expending person by the candidate
- 38 or by the candidate’s agent, or by any political committee or agent of a political committee sup-
- 39 porting or opposing a measure, with a view toward having an expenditure made; or
- 40 (ii) Made by or through any person who is or has been authorized to raise or expend funds, who
- 41 is or has been an officer of a political committee authorized by the candidate or by a political
- 42 committee or agent of a political committee supporting or opposing a measure, or who is or has been
- 43 receiving any form of compensation or reimbursement from the candidate, the candidate’s principal
- 44 campaign committee or agent or from any political committee or agent of a political committee
- 45 supporting or opposing a measure.

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

3 (11) "Initiative petition" means a petition to initiate a measure for which a prospective petition  
 4 has been filed but that is not yet a measure.

5 (12) "Judge" means judge of the Supreme Court, Court of Appeals, circuit court or the Oregon  
 6 Tax Court.

7 (13) "Mass mailing" means more than 200 substantially similar pieces of mail, but does not in-  
 8 clude a form letter or other mail that is sent in response to an unsolicited request, letter or other  
 9 inquiry.

10 (14) "Measure" includes any of the following submitted to the people for their approval or re-  
 11 jection at an election:

12 (a) A proposed law.

13 (b) An Act or part of an Act of the Legislative Assembly.

14 (c) A revision of or amendment to the Oregon Constitution.

15 (d) Local, special or municipal legislation.

16 (e) A proposition or question.

17 (15) "Occupation" means:

18 (a) The nature of an individual's principal business; and

19 (b) If the individual is employed by another person, the business name and address, by city and  
 20 state, of the employer.

21 (16) "Person" means an individual, corporation, limited liability company, labor organization,  
 22 association, firm, partnership, joint stock company, club, organization or other combination of indi-  
 23 viduals having collective capacity.

24 (17) "Petition committee" means an initiative, referendum or recall petition committee organized  
 25 under ORS 260.118.

26 (18) "Political committee" means a combination of two or more individuals, or a person other  
 27 than an individual, that has:

28 (a) Received a contribution for the purpose of supporting or opposing a candidate, measure or  
 29 political party; or

30 (b) Made an expenditure for the purpose of supporting or opposing a candidate, measure or  
 31 political party. For purposes of this paragraph, an expenditure does not include:

32 (A) A contribution to a candidate or political committee that is required to report the contri-  
 33 bution on a statement filed under ORS 260.057 or 260.076 or a certificate filed under ORS 260.112;  
 34 or

35 (B) An independent expenditure for which a statement is required to be filed by a person under  
 36 ORS 260.044.

37 (19) "Public office" means any national, state, county, district, city office or position, except a  
 38 political party office, that is filled by the electors.

39 (20) "Recall petition" means a petition to recall a public officer for which a prospective petition  
 40 has been filed but that is not yet a measure.

41 (21) "Referendum petition" means a petition to refer a measure for which a prospective petition  
 42 has been filed but that is not yet a measure.

43 (22) "Regular district election" means the regular district election described in ORS 255.335.

44 (23) "State office" means the office of Governor, Secretary of State, State Treasurer, Attorney  
 45 General, Commissioner of the Bureau of Labor and Industries, state Senator, state Representative,

1 judge or district attorney.

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

3 260.232. (1) The Secretary of State may impose a civil penalty as provided in this section, in  
4 addition to any other penalty that may be imposed, for:

5 (a) Failure to file a statement or certificate required to be filed under ORS 260.044, 260.057,  
6 260.076, 260.078, 260.083, 260.112 or 260.118.

7 (b) Failure to include in a statement filed under ORS 260.044, 260.057, 260.076, 260.078, 260.083,  
8 260.112 or 260.118 the information required under ORS 260.044, 260.057, 260.076, 260.083 or 260.118.

9 **(c) A political committee affiliated with a caucus in the Senate or the House of Repre-**  
10 **sentatives incorrectly identifying an independent expenditure as an expenditure that was**  
11 **made with the prior consent of, or in consultation with, or at the request or suggestion of,**  
12 **a candidate for the office of state Senator or state Representative, or any agent or author-**  
13 **ized committee of the candidate.**

14 (2)(a) If a person required to file has not filed a statement or certificate complying with appli-  
15 cable provisions of ORS 260.044, 260.057, 260.076, 260.078, 260.083, 260.085, 260.112 or 260.118 within  
16 the time specified in ORS 260.044, 260.057, 260.076, 260.078 or 260.118, the Secretary of State by first  
17 class mail or electronically shall notify the person or elector designated under ORS 260.042 or  
18 260.118 that a penalty may be imposed and that the person has 20 days from the service date on the  
19 notice to request a hearing before the Secretary of State.

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

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

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

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

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

32 (4) A hearing under subsection (3) of this section shall be held not later than 45 days after the  
33 deadline for the person against whom the penalty may be assessed to request a hearing. However,  
34 if requested by the person against whom the penalty may be assessed, a hearing under subsection  
35 (3) of this section shall be held not later than 60 days after the deadline for the person against whom  
36 the penalty may be assessed to request a hearing.

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

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

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

45 (a) For failure to file a statement or certificate required to be filed under ORS 260.044, 260.057,

1 260.076, 260.078, 260.083, 260.112 or 260.118, 10 percent of the total amount of the contribution or  
 2 expenditure required to be included in the statement or certificate[; *or*].

3 (b) For each failure to include in a statement filed under ORS 260.044, 260.057, 260.076, 260.078,  
 4 260.083, 260.112 or 260.118 the information required under ORS 260.044, 260.057, 260.076, 260.083 or  
 5 260.118, 10 percent of the total amount of the contribution or expenditure required to be included  
 6 in the statement.

7 (c) **Except as provided in subsection (8) of this section, \$10,000 for each instance of a**  
 8 **political committee affiliated with a caucus in the Senate of the House of Representatives**  
 9 **incorrectly identifying an independent expenditure as an expenditure that was made with the**  
 10 **prior consent of, or in consultation with, or at the request or suggestion of, a candidate for**  
 11 **the office of state Senator or state Representative, or any agent or authorized committee**  
 12 **of the candidate.**

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

15 (b) **The Secretary of State may not impose a civil penalty under subsection (7)(c) of this**  
 16 **section if the political committee demonstrates that the political committee received from**  
 17 **the candidate for the office of state Senator or state Representative a signed consent form,**  
 18 **as described in section 2 of this 2019 Act, before making the expenditure.**

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

21 **SECTION 6. Sections 2 and 3 of this 2019 Act and the amendments to ORS 260.005 and**  
 22 **260.232 by sections 4 and 5 of this 2019 Act apply to expenditures made on or after the ef-**  
 23 **fective date of this 2019 Act.**

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