

Requested by HOUSE COMMITTEE ON RULES (at the request of Representative Paul Holvey)

**PROPOSED AMENDMENTS TO
HOUSE BILL 2716**

1 On page 1 of the printed bill, line 2, after the semicolon delete the rest
2 of the line and insert “creating new provisions; and amending ORS
3 260.995.”.

4 Delete lines 4 through 29 and delete page 2 and insert:

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

7 **“SECTION 2. (1) Except as otherwise provided by a local provision,
8 a communication in support of or in opposition to a clearly identified
9 candidate must state the name of the persons that paid for the com-
10 munication.**

11 **“(2) For the purpose of complying with subsection (1) of this sec-
12 tion:**

13 **“(a) Except as provided in paragraph (b) of this subsection, a com-
14 munication in support of or in opposition to a clearly identified can-
15 didate by a political committee or petition committee must state:**

16 **“(A) The name of the political committee or petition committee;
17 and**

18 **“(B) The names of the five persons that have made the largest ag-
19 gregate contributions of \$10,000 or more to the committee in the
20 election cycle in which the communication is made.**

21 **“(b) A communication in support of or in opposition to a clearly**

1 **identified candidate by an individual, a for-profit business entity or a**
2 **candidate or the principal campaign committee of a candidate must**
3 **state the name of the individual, for-profit business entity or candi-**
4 **date.**

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

8 **“(i) The name of the person; and**

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

13 **“(B) In identifying persons that have made aggregate donations of**
14 **\$10,000 or more, a person described in this paragraph may exclude:**

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

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

21 **“(d) Notwithstanding paragraphs (a) to (c) of this subsection, a**
22 **digital communication may state only the name of the person that**
23 **made the communication if the digital communication includes an**
24 **active link to a website that prominently displays the additional in-**
25 **formation required by this subsection.**

26 **“(3) A person that makes communications in support of or in op-**
27 **position to a clearly identified candidate must consider an anonymous**
28 **donation of \$1,000 or more from a single person to be a donation that**
29 **may not be used to make a communication in support of or in oppo-**
30 **sition to a clearly identified candidate.**

1 **“(4)(a) If a person is required to disclose the names of five persons**
2 **under subsection (2)(a)(B) or (c)(A)(ii) of this section and more than**
3 **five persons qualify as having made the largest aggregate contribu-**
4 **tions or donations, the person shall disclose the five applicable persons**
5 **whose contributions or donations were made closest to the date of in-**
6 **itial printing or transmission of the communication.**

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

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

19 **“(5) This section does not apply to:**

20 **“(a) Candidates for federal office.**

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

25 **“(c) Petition committees that are not required to use the electronic**
26 **filing system adopted under ORS 260.057 to file statements of contri-**
27 **butions received or expenditures made.**

28 **“(d) Political committees that are not required to use the electronic**
29 **filing system adopted under ORS 260.057 to file statements of contri-**
30 **butions received or expenditures made.**

1 “(e) A person that makes independent expenditures and that is ex-
2 empt under ORS 260.044 from being required to file statements of in-
3 dependent expenditures using the electronic filing system adopted
4 under ORS 260.057.

5 “(f) A communication that is excluded from the definition of ‘ex-
6 penditure’ under ORS 260.007.

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

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

10 “(B) Skywriting; or

11 “(C) Wearable merchandise.

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

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

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

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

23 “(7) As used in this section:

24 “(a) ‘Clearly identified’ has the meaning given that term in ORS
25 260.005 (10)(b).

26 “(b)(A) Except as provided in subparagraph (B) of this paragraph,
27 ‘communication in support of or in opposition to a clearly identified
28 candidate’ means:

29 “(i)(I) The communication, when taken as a whole and with limited
30 reference to external events, such as the proximity to the election,

1 could only be interpreted by a reasonable person as containing advo-
2 cacy for the election or defeat of a clearly identified candidate for
3 nomination or election to public office; and

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

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

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

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

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

15 “(ii) ‘Communication in support of or in opposition to a clearly
16 identified candidate’ does not include newspaper editorials, printed
17 advertisements with a fair market value of less than \$500 or commu-
18 nications made via telephone that have a fair market value of less
19 than \$500.

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

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

26 “(d) ‘Election cycle’ means the period of time starting on the day
27 after the date of a general election and ending on the date of the next
28 general election.

29 “(e) ‘Local provision’ means a charter provision, ordinance, resol-
30 ution or other provision adopted by a city, county or other local gov-

1 **ernment.**

2 **“SECTION 3.** ORS 260.995 is amended to read:

3 “260.995. (1) Except as provided in subsection (2) of this section, following
4 an investigation under ORS 260.345, the Secretary of State or Attorney
5 General may impose a civil penalty not to exceed \$1,000 for each violation
6 of any provision of Oregon Revised Statutes relating to the conduct of any
7 election, any rule adopted by the secretary under ORS chapters 246 to 260
8 or any other matter preliminary to or relating to an election, for which a
9 civil penalty is not otherwise provided.

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

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

14 **“(b) 150 percent of the total cost of printing, transmitting or dis-**
15 **tributing a communication in support of or in opposition to a clearly**
16 **identified candidate if the disclosure requirements set forth in section**
17 **2 of this 2019 Act are not met; or**

18 “[~~(b)~~] (c) \$10,000 for each violation of ORS 260.555, 260.558, 260.575,
19 260.695 (1) or 260.715 (1) or section 1b, Article IV of the Oregon Constitution.

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

23 “(a) A statement of the authority and jurisdiction under which the hear-
24 ing is to be held; and

25 “(b) If the person is an agency, corporation or an unincorporated associ-
26 ation, a statement that such person must be represented by an attorney li-
27 censed in Oregon, unless the person is a political committee which may be
28 represented by any officer identified in the most recent statement of organ-
29 ization filed with the filing officer.

30 “(4) A hearing on whether to impose a civil penalty and to consider cir-

1 cumstances in mitigation shall be held by the secretary or Attorney General:

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

5 “(b) Upon the secretary’s or Attorney General’s own motion.

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

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

18 “(7) The secretary or Attorney General shall issue an order not later than
19 90 days after a hearing or after the deadline for requesting a hearing if no
20 hearing is held.

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

23 “(9) In the case of a civil penalty imposed under this section for a vio-
24 lation of ORS 260.407, the person against whom the penalty is assessed:

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

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

27 “(c) May not pay the civil penalty from contributions received by a can-
28 didate, a candidate’s principal campaign committee, a political committee or
29 a petition committee.

30 **“SECTION 4. It is the intent of the Legislative Assembly that all**

1 parts of this 2019 Act are independent and that if any part of this 2019
2 Act is held unconstitutional, all remaining parts shall remain in force.

3 SECTION 5. Section 2 of this 2019 Act and the amendments to ORS
4 260.995 by section 3 of this 2019 Act become operative on December 3,
5 2020.”.

6
