

A-Engrossed
House Bill 2716

Ordered by the House June 4
Including House Amendments dated June 4

Sponsored by Representatives RAYFIELD, KENY-GUYER; Representatives EVANS, MARSH, MITCHELL, NOSSE, PILUSO, POWER, SANCHEZ, Senators GELSER, STEINER HAYWARD, TAYLOR (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.

Requires communications made in support of or opposition to candidate **to state name of persons that paid for communication. Requires person that makes communication to include specified donor information in specified circumstances. Allows digital communication to include link to active website that prominently displays required donor information** [*or measure to identify whether candidate, petition committee or political committee authorized communication*].

Requires person that makes communication to consider anonymous donation of \$1,000 or more from single person as donation that may not be used to make communication.

Authorizes Secretary of State to determine by rule form of required statement. Authorizes secretary or Attorney General to impose civil penalty of up to 150 percent of cost of making communication if disclosure requirements are not met.

Becomes operative December 3, 2020.

[Takes effect only if House Joint Resolution 13 (2019) is approved by people at regular general election held in November 2020. Takes effect on effective date of constitutional amendment proposed in House Joint Resolution 13 (2019).]

A BILL FOR AN ACT

1
2 Relating to campaign finance; creating new provisions; and amending ORS 260.995.

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

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

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

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

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

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

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

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

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

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 (i) The name of the person; and

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

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

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

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

11 (d) Notwithstanding paragraphs (a) to (c) of this subsection, a digital communication may
12 state only the name of the person that made the communication if the digital communication
13 includes an active link to a website that prominently displays the additional information re-
14 quired by this subsection.

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

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

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

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

33 (5) This section does not apply to:

34 (a) Candidates for federal office.

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

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

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

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

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

1 **260.007.**

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

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

4 (B) Skywriting; or

5 (C) Wearable merchandise.

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

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

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

13 (b) Clearly audible to the average person, if the communication appears in an audio for-
14 mat.

15 (7) As used in this section:

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

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

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

23 (II) The electoral portion of the communication is unmistakable, unambiguous and sug-
24 gestive of only one meaning; or

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

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

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

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

34 (ii) "Communication in support of or in opposition to a clearly identified candidate" does
35 not include newspaper editorials, printed advertisements with a fair market value of less
36 than \$500 or communications made via telephone that have a fair market value of less than
37 \$500.

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

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

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

1 (e) **“Local provision” means a charter provision, ordinance, resolution or other provision**
2 **adopted by a city, county or other local government.**

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

4 260.995. (1) Except as provided in subsection (2) of this section, following an investigation under
5 ORS 260.345, the Secretary of State or Attorney General may impose a civil penalty not to exceed
6 \$1,000 for each violation 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 or any other matter
8 preliminary to or relating to an election, for which a civil penalty is not otherwise provided.

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

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

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

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

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

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

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

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

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 after the date the person received notice sent under subsection (3) of
28 this section; or

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

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

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

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

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

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

- 1 (a) Is personally responsible for the payment of the civil penalty;
2 (b) Shall pay the civil penalty from personal funds of the person; and
3 (c) May not pay the civil penalty from contributions received by a candidate, a candidate's
4 principal campaign committee, a political committee or a petition committee.

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

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

10
