

Senate Bill 870

Sponsored by Senator 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**.

Revises disclosure requirements that must accompany public communications that support or oppose candidates for public office. Establishes private enforcement mechanism for requirements.

A BILL FOR AN ACT

1
2 Relating to campaign finance; creating new provisions; and amending ORS 260.266.

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

4 **SECTION 1. Sections 2 and 4 of this 2021 Act are added to and made a part of ORS**
5 **chapter 260.**

6 **SECTION 2. As used in ORS 260.266 and sections 2 and 4 of this 2021 Act:**

7 (1) **"Advertiser" means the individual or entity, including any political committee or**
8 **maker of an independent expenditure, that paid for one or more public communications at**
9 **an aggregate cost or value of \$5,000 or more during an election cycle.**

10 (2) **"Anonymous source" means any source of moneys, donations or contributions to any**
11 **advertiser or intermediary for which the recipient does not have the name and address of**
12 **the individual or entity that provides the moneys, donations or contributions.**

13 (3) **"Business entity" means any legal entity operated for economic gain, including any**
14 **corporation, partnership, limited liability company, proprietorship, firm, enterprise, fran-**
15 **chise, association or other legal entity that is legally separate from an individual.**

16 (4) **"Business income" means moneys received by a person in commercial transactions**
17 **in the ordinary course of the person's regular trade, business or investments, excluding**
18 **contributions or donations. For a membership organization, "business income" includes up**
19 **to \$1,000 paid by an individual to the membership organization in any calendar year, including**
20 **any contributions or dues paid by the individual to the organization.**

21 (5) **"Clearly identified" has the meaning given that term in ORS 260.005 (10)(b).**

22 (6) **"Communication in support of or in opposition to a clearly identified candidate"**
23 **means:**

24 (a)(A) **The communication, when taken as a whole and with limited reference to external**
25 **events, such as the proximity to the election, could only be interpreted by a reasonable per-**
26 **son as containing advocacy for the election or defeat of a clearly identified candidate for**
27 **nomination or election to public office; and**

28 (B) **The electoral portion of the communication is unmistakable, unambiguous and sug-**
29 **gestive of only one meaning; or**

30 (b)(A) **The communication refers to a clearly identified candidate who will appear on the**
31 **ballot; and**

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

3 **(7) “Dominant source” means any individual or entity that has provided more than \$2,000**
 4 **of original moneys during an election cycle to an advertiser, either directly or through in-**
 5 **termediaries.**

6 **(8)(a) “Donation” means the gift or transfer of moneys or any other item of value, in-**
 7 **cluding any membership fees, dues or assessments.**

8 **(b) “Donation” does not include moneys or any other item of value received by a person**
 9 **in the ordinary course of a trade or business conducted by the person.**

10 **(9)(a) “Election cycle” means, except as provided in paragraph (b) of this subsection, the**
 11 **period of time between an election at which a candidate is elected to public office and the**
 12 **next election for the same office, regardless of any other elections that occur during that**
 13 **period, including a general election, primary or nominating election, recall election or special**
 14 **election called to fill a vacancy.**

15 **(b)(A) For a recall election, “election cycle” means the period beginning the day that the**
 16 **recall election is called or declared and ending at midnight of the day of the recall election.**

17 **(B) For any special election called to fill a vacancy, “election cycle” means the period**
 18 **beginning the day that the special election is called or declared and ending at midnight of the**
 19 **day of the election.**

20 **(10) “Entity” means any corporation, limited liability company, labor union, association,**
 21 **firm, partnership, joint stock company, club, proprietorship, enterprise, franchise, principal**
 22 **campaign committee, political committee, organization or other combination of individuals**
 23 **that has collective capacity and is legally separate from an individual.**

24 **(11) “Individual” means any human being.**

25 **(12) “Intermediary” means a person or entity that has derived moneys from contribu-**
 26 **tions, donations, dues, gifts or transfers.**

27 **(13)(a) “Media organization” means, except as provided in paragraph (b) of this sub-**
 28 **section, any television or radio station, newspaper, magazine or other regularly published**
 29 **periodical.**

30 **(b) “Media organization” does not mean an organization that:**

31 **(A) Is paid by any individual or entity for distributing the news story, commentary or**
 32 **editorial, apart from normal advertisers;**

33 **(B) Is owned or controlled by one or more candidates, political committees or political**
 34 **parties; or**

35 **(C) Distributes the news story, commentary or editorial by unsolicited mailings or other**
 36 **means of distribution not requested by the recipient, including any paid advertisement in any**
 37 **other medium.**

38 **(14) “Membership organization” means an organization that:**

39 **(a)(A) Is tax exempt under section 501(c) of the Internal Revenue Code;**

40 **(B) Has filed all necessary materials to obtain tax exempt status under section 501(c) of**
 41 **the Internal Revenue Code with the federal Internal Revenue Service and has not yet had**
 42 **the organization’s application approved or denied; or**

43 **(C) Is fiscally sponsored by an organization that is tax exempt under section 501(c) of the**
 44 **Internal Revenue Code;**

45 **(b) Is not formed or operated for the purpose of conducting or promoting commercial**

1 **enterprise; and**

2 **(c) Is composed of members who:**

3 **(A) Have taken action to join the organization; and**

4 **(B) For each year of membership, on an annual or more frequent basis, either pay mon-**
5 **etary membership dues, make a monetary donation or volunteer time as a condition of**
6 **maintaining membership in the organization.**

7 **(15) “Original moneys” means moneys obtained from business income or personal mon-**
8 **eys.**

9 **(16)(a) “Personal moneys” means, except as provided in paragraph (b) of this subsection,**
10 **any income received by an individual, including:**

11 **(A) Salary and other earned income from bona fide employment;**

12 **(B) Interest, dividends and proceeds from the individual’s personal investments; and**

13 **(C) Bequests to the individual, including income from trusts established by bequests.**

14 **(b) “Personal moneys” does not mean any asset or income received from any person for**
15 **the purpose of influencing any election.**

16 **(17) “Prominently disclose” means that:**

17 **(a) The disclosure is readily comprehensible to an individual with average reading, vision**
18 **and hearing faculties; and**

19 **(b)(A) Any printed disclosure appears in a typeface of contrasting color and in a font size**
20 **that is at least as large as the font size used for the majority of the text in the printed ma-**
21 **terial;**

22 **(B) Any video disclosure is readable without the use of closed captioning and is visible**
23 **for four or more seconds;**

24 **(C) Any video disclosure is accompanied by an auditory disclosure of the required infor-**
25 **mation;**

26 **(D) Any auditory disclosure is spoken at a maximum rate of five words per second;**

27 **(E) Any disclosure displayed on an Internet website or as part of an electronic mail**
28 **message is in a typeface of contrasting color and in a font size that is at least as large as**
29 **the font size used for the majority of the text used on the website or in the body of the**
30 **message;**

31 **(F) Any disclosure on a billboard or sign appears in a typeface of contrasting color and**
32 **in a font size that is at least 10 percent of the height of the billboard or sign; and**

33 **(G) The disclosure is current to within:**

34 **(i) 10 days of the printing of printed material; or**

35 **(ii) Five days of the sending of electronic text, electronic mail, the posting of information**
36 **on the Internet or the transmitting of a video or audio public communication.**

37 **(18)(a) “Public communication,” except as provided in paragraph (b) of this subsection,**
38 **means a communication in support of or in opposition to a clearly identified candidate that**
39 **is made by:**

40 **(A) Broadcast, cable, satellite, Internet or other electronic method, including text mes-**
41 **sages, mass electronic mail and social media posts; and**

42 **(B) Newspaper, magazine, outdoor advertising facility, signs, mass mailing, telephone**
43 **bank, robocall or any other form of general political advertising or marketing, regardless of**
44 **medium.**

45 **(b) “Public communication” does not include:**

1 (A) Small items worn or carried by individuals, including buttons, pins, stickers or pens.

2 (B) Bumper stickers.

3 (C) Signs smaller than eight square feet.

4 (D)(i) Communications with a fair market value of less than \$2,000 for the entire place-
5 ment of the communication plus substantially similar communications.

6 (ii) A calculation made under this subparagraph must consider any communication in its
7 entirety and may not be based on the value or cost per view, click, action, message, elec-
8 tronic mail message, telephone call or similar methods.

9 (E) A bona fide news story, commentary or editorial distributed through the facilities of
10 any media organization.

11 **SECTION 3.** ORS 260.266 is amended to read:

12 260.266. (1) Each public communication shall prominently disclose the original sources of
13 the moneys used by the advertiser for the public communication.

14 (2) The disclosure required under subsection (1) of this section shall include:

15 (a) The names of each advertiser, including any political committee or other entity that
16 paid to provide or present the public communication; and

17 (b) For each of the four dominant sources providing the largest aggregate amount of
18 moneys to each of the advertisers during the current election cycle:

19 (A) The name of the individual or entity that provided the moneys; and

20 (B) The names and types of businesses from which the provider of the moneys has ob-
21 tained a majority of income over the previous five years, with each business identified by the
22 most accurate name listed with its six-digit code of the North American Industry Classi-
23 fication System (NAICS).

24 (3)(a) The four largest dominant sources shall be determined by calculating the four in-
25 dividuals or entities that provided the most aggregate original moneys, directly or indirectly,
26 during the election cycle to each advertiser.

27 (b) If fewer than four sources of moneys qualify as dominant sources, an intermediary
28 who transferred, directly or indirectly, more than \$5,000 to the advertiser or advertisers
29 during the election cycle shall be treated as a source of original moneys.

30 (c) If the calculation performed under paragraph (a) of this subsection results in more
31 than four largest dominant sources due to two or more dominant sources having provided
32 identical amounts of moneys to the advertiser, a dominant source that most recently pro-
33 vided moneys to the advertiser shall be considered one of the four largest dominant sources,
34 rather than a dominant source that gave the same amount of moneys to the advertiser at
35 an earlier date.

36 (d) The advertiser and persons acting with or on behalf of the advertiser may not create
37 or use a separate political committee or entity to avoid the disclosure of any individual,
38 business entity or committee as a dominant source.

39 (4)(a) An advertiser may not use moneys from anonymous sources to make a public
40 communication.

41 (b) An intermediary may not convey moneys from one or more anonymous sources to
42 an advertiser.

43 (5) Each intermediary that provides moneys to an advertiser shall inform the advertiser,
44 within five calendar days of providing the moneys, of the identity of each person who directly
45 or indirectly contributed \$2,000 or more in original moneys to the intermediary and the

1 amount of each person's original moneys that are being transferred to the advertiser. The
2 intermediary must maintain records documenting information provided under this section
3 for five years and provide the records, upon request, to governmental authorities and parties
4 in complaint proceedings brought under section 4 of this 2021 Act.

5 (6) A person or entity may not try to evade the requirements of this section by struc-
6 turing, or attempting to structure, any solicitation, contribution, donation, expenditure, dis-
7 bursement or other transaction so as to avoid disclosing the original sources of moneys used
8 for a public communication.

9 (7) Any local government may adopt disclaimer and disclosure requirements that are
10 more stringent than those required by this section. A disclaimer or disclosure requirement
11 adopted by a local government may not reduce the applicability of the requirements of this
12 section.

13 (8) This section does not apply to candidates for federal office or for political party office.

14 (9) The Secretary of State may adopt rules to implement this section. Any rules adopted
15 by the secretary:

16 (a) Must ensure the implementation of all requirements set forth in this section; and

17 (b) May not reduce or relax any of the requirements set forth in this section.

18 *[(1) Except as otherwise provided by a local provision, a communication in support of or in oppo-*
19 *sition to a clearly identified candidate must state the name of the persons that paid for the communi-*
20 *cation.]*

21 *[(2) For the purpose of complying with subsection (1) of this section:]*

22 *[(a) Except as provided in paragraph (b) of this subsection, a communication in support of or in*
23 *opposition to a clearly identified candidate by a political committee or petition committee must state:]*

24 *[(A) The name of the political committee or petition committee; and]*

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

27 *[(b) A communication in support of or in opposition to a clearly identified candidate by an indi-*
28 *vidual, a for-profit business entity or a candidate or the principal campaign committee of a candidate*
29 *must state the name of the individual, for-profit business entity or candidate.]*

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

32 *[(i) The name of the person; and]*

33 *[(ii) Except as provided in subparagraph (B) of this paragraph, the names of the five persons that*
34 *have made the largest aggregate donations of \$10,000 or more to the person in the election cycle in*
35 *which the communication is made.]*

36 *[(B) In identifying persons that have made aggregate donations of \$10,000 or more, a person de-*
37 *scribed in this paragraph may exclude:]*

38 *[(i) Donations received from an affiliated charitable organization that is tax exempt under section*
39 *501(c)(3) of the Internal Revenue Code; and]*

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

42 *[(d) Notwithstanding paragraphs (a) to (c) of this subsection, a digital communication may state*
43 *only the name of the person that made the communication if the digital communication includes an*
44 *active link to a website that prominently displays the additional information required by this sub-*
45 *section.]*

1 [(3) A person that makes communications in support of or in opposition to a clearly identified
2 candidate must consider an anonymous donation of \$1,000 or more from a single person to be a do-
3 nation that may not be used to make a communication in support of or in opposition to a clearly
4 identified candidate.]

5 [(4)(a) If a person is required to disclose the names of five persons under subsection (2)(a)(B) or
6 (c)(A)(ii) of this section and more than five persons qualify as having made the largest aggregate con-
7 tributions or donations, the person shall disclose the five applicable persons whose contributions or
8 donations were made closest to the date of initial printing or transmission of the communication.]

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

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

18 [(5) This section does not apply to:]

19 [(a) Candidates for federal office.]

20 [(b) Candidates other than those described in paragraph (a) of this subsection who are not required
21 to use the electronic filing system adopted under ORS 260.057 to file statements of contributions re-
22 ceived or expenditures made.]

23 [(c) Petition committees that are not required to use the electronic filing system adopted under ORS
24 260.057 to file statements of contributions received or expenditures made.]

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

27 [(e) A person that makes independent expenditures and that is exempt under ORS 260.044 from
28 being required to file statements of independent expenditures using the electronic filing system adopted
29 under ORS 260.057.]

30 [(f) A communication that is excluded from the definition of “expenditure” under ORS 260.007.]

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

32 [(A) Lawn signs, pins, pens and other similar items;]

33 [(B) Skywriting; or]

34 [(C) Wearable merchandise.]

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

37 [(6) The Secretary of State by rule shall prescribe the form of statements required on communi-
38 cations described in this section. Rules adopted under this subsection must ensure that the information
39 required to be included in communications under this section is:]

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

42 [(b) Clearly audible to the average person, if the communication appears in an audio format.]

43 [(7) As used in this section:]

44 [(a) “Clearly identified” has the meaning given that term in ORS 260.005 (10)(b).]

45 [(b)(A) Except as provided in subparagraph (B) of this paragraph, “communication in support of

1 *or in opposition to a clearly identified candidate” means:]*

2 *[(i)(I) The communication, when taken as a whole and with limited reference to external events,*
3 *such as the proximity to the election, could only be interpreted by a reasonable person as containing*
4 *advocacy for the election or defeat of a clearly identified candidate for nomination or election to public*
5 *office; and]*

6 *[(II) The electoral portion of the communication is unmistakable, unambiguous and suggestive of*
7 *only one meaning; or]*

8 *[(ii)(I) The communication involves aggregate expenditures by a person of more than the amount*
9 *provided in ORS 260.044 (1);]*

10 *[(II) The communication refers to a clearly identified candidate who will appear on the ballot;*
11 *and]*

12 *[(III) The communication is printed or transmitted to the relevant electorate within the time frame*
13 *provided in ORS 260.005 (10)(c)(B)(iii).]*

14 *[(B)(i) “Communication in support of or in opposition to a clearly identified candidate” includes*
15 *but is not limited to communications distributed via print, telephone, radio, television or the Internet.]*

16 *[(ii) “Communication in support of or in opposition to a clearly identified candidate” does not in-*
17 *clude newspaper editorials, printed advertisements with a fair market value of less than \$500 or com-*
18 *munications made via telephone that have a fair market value of less than \$500.]*

19 *[(c)(A) “Donation” means the gift or transfer of moneys or any other item of value to a person*
20 *subject to subsection (2)(c)(A) of this section, including any membership fees, dues or assessments.]*

21 *[(B) “Donation” does not include moneys or any other item of value received by a person subject*
22 *to subsection (2)(c)(A) of this section in the ordinary course of a trade or business conducted by the*
23 *person.]*

24 *[(d) “Election cycle” means the period of time starting on the day after the date of a general election*
25 *and ending on the date of the next general election.]*

26 *[(e) “Local provision” means a charter provision, ordinance, resolution or other provision adopted*
27 *by a city, county or other local government.]*

28 **SECTION 4. (1) ORS 260.266 shall be administered and enforced by the Secretary of State,**
29 **the Attorney General and Oregon’s electors.**

30 **(2) Each violation of a provision of ORS 260.266 shall be punished by a civil fine that is**
31 **not less than:**

32 **(a) Two times, nor more than 10 times, the amount of the expenditure on a public com-**
33 **munication that does not comply with ORS 260.266; and**

34 **(b) \$1 per recipient of any public communication that is distributed by the Internet or**
35 **other digital method.**

36 **(3)(a) Any person, including any state or local government officer or employee, may file**
37 **a written complaint alleging a violation of ORS 260.266 with the Secretary of State or, if the**
38 **alleged violation was committed by the Secretary of State, with the Attorney General.**

39 **(b) The Secretary of State by rule shall establish a process to investigate each complaint**
40 **and determine whether there is cause to proceed to a contested case hearing, or whether the**
41 **complaint should be dismissed. The filing officer shall refer each nondismissed complaint to**
42 **the Office of Administrative Hearings, which shall provide an opportunity for the**
43 **complainant or the subject of the complaint or the filing officer to require a contested case**
44 **hearing on the complaint. Any hearing described in this subsection shall occur within 40**
45 **calendar days of the filing of the complaint. The complainant and the subject of the com-**

1 **plaint shall be parties to the contested case and have right to discovery equal to a party**
2 **before a circuit court.**

3 **(4)(a) The Office of Administrative Hearings shall render a final decision in a contested**
4 **case hearing requested under subsection (3) of this section no later than 15 calendar days**
5 **after the close of the hearing.**

6 **(b) If a contested case hearing is not requested under subsection (3) of this section, the**
7 **Office of Administrative Hearings shall render a final decision on the complaint no later than**
8 **15 calendar days after the deadline for requesting a contested case hearing under subsection**
9 **(3) of this section.**

10 **(c) A final decision rendered under this subsection shall include any appropriate order,**
11 **sanction or relief authorized by law.**

12 **(5)(a) If the Office of Administrative Hearings does not render a final decision within the**
13 **time period required under subsection (4) of this section, any party to the hearing may:**

14 **(A) Continue the contested case hearing before the Office of Administrative Hearings;**
15 **or**

16 **(B) Appeal the contested case to any circuit court in this state and there obtain an**
17 **evidentiary hearing and decision on the complaint.**

18 **(b) Any circuit court decision made under paragraph (a) of this subsection is subject to**
19 **appellate review.**

20 **(6)(a) A final decision of the Office of Administrative Hearings under this section shall**
21 **be subject to review by the Court of Appeals as an agency decision in a contested case.**

22 **(b) The Court of Appeals shall, upon request, conduct de novo review of any issue of fact**
23 **or law in the contested case.**

24 **(7) A contested case hearing described in this section is not subject to any claim or de-**
25 **fense of prosecutorial discretion.**

26 **(8) A final decision on any complaint brought under this section shall be enforced by the**
27 **Secretary of State and the Attorney General. If a decision is not enforced within 30 calendar**
28 **days of the decision becoming final, including any judicial review, the complainant may bring**
29 **a civil action in a representative capacity for the collection of the applicable civil penalty,**
30 **payable to the State Treasury.**

31 **(9) In addition to any other remedy permitted by law, any individual or entity that is**
32 **adversely affected by a violation of ORS 260.266, or that filed a complaint under this section**
33 **alleging a violation of ORS 260.266, may bring a civil action in a representative capacity**
34 **against the alleged violator for the collection of the applicable civil penalty, payable to the**
35 **State Treasury.**

36 **(10) The Secretary of State may adopt rules to implement this section. Any rules adopted**
37 **by the secretary:**

38 **(a) Must ensure the implementation of all requirements set forth in this section; and**

39 **(b) May not reduce or relax any of the requirements set forth in this section.**

40 **SECTION 5. It is the intent of the Legislative Assembly that all parts of sections 2 and**
41 **4 of this 2021 Act and the amendments to ORS 260.266 by section 3 of this 2021 Act are in-**
42 **dependent and that, if any provision of section 2 or 4 of this 2021 Act or the amendments to**
43 **ORS 260.266 by section 3 of this 2021 Act are held unconstitutional, that all remaining parts**
44 **shall remain in force.**

45 **SECTION 6. Sections 2 and 4 of this 2021 Act and the amendments to ORS 260.266 by**

1 **section 3 of this 2021 Act apply to public communications that are made on or after the ef-**
2 **fective date of this 2021 Act.**

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