

CHAPTER 462

AN ACT

SB 478

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

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

SECTION 1. ORS 260.407 is amended to read:

260.407. (1)(a) Except as provided in paragraph (b) of this subsection, amounts received as contributions by a candidate, the principal campaign committee of a candidate or the principal campaign committee of a holder of public office may be:

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

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

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

(D) Used for any other lawful purpose.

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

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

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

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

(D) **Used to make payments in connection with a nondisclosure agreement relating to workplace harassment. A nondisclosure agreement made in violation of this subparagraph is**

void and may not be enforced by a court of this state.

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

(A) Used to repay to the political committee any loan the proceeds of which were used in connection with the campaign;

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

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

(D) Used for any other lawful purpose.

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

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

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

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

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

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

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

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

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

(D) Used for any other lawful purpose.

(b) Amounts received as contributions by a chief petitioner or treasurer of a petition committee may not be:

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

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

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

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

(4) As used in this section:

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

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

(c) "Public office" does not include national or political party office.

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

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

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

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

(b) Use moneys received from a third party to make payments in connection with a nondisclosure agreement relating to workplace

harassment if the alleged harassment occurred when the holder of public office or candidate was acting as a holder of public office or candidate.

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

(3) As used in this section:

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

(A) Money;

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

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

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

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

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

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

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

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

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

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

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

(2) As used in this section:

(a) "Consideration in connection with a nondisclosure agreement" includes any form of consideration provided in exchange for the silence of an individual on issues relating to

workplace harassment, including but not limited to:

- (A) Money;
 - (B) Stock, personal property or other items with a resale value;
 - (C) Severance pay or benefits for an individual who resigned or was fired from a place of employment without cause;
 - (D) The promise of a positive reference or assistance in obtaining future employment in a position in which the individual's salary is paid for with public moneys;
 - (E) The promise of a bonus payment of moneys in addition to the individual's salary;
 - (F) Alternative work arrangements that have the effect of reducing the amount of work required to be performed by the individual, or of removing the individual from the workplace; or
 - (G) Any agreement that terminates the employment of the individual and includes a waiver of past or future claims against the holder of public office, the public body or any public employee.
- (b) "Workplace harassment" means conduct that constitutes discrimination prohibited by ORS 659A.030, including conduct that constitutes sexual assault as defined in ORS 181A.323.

SECTION 6. ORS 260.995 is amended to read:

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

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

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

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

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

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

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

(b) If the person is an agency, corporation or an unincorporated association, a statement that such person must be represented by an attorney licensed

in Oregon, unless the person is a political committee which may be represented by any officer identified in the most recent statement of organization filed with the filing officer.

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

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

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

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

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

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

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

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

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

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

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

SECTION 7. ORS 244.350 is amended to read:

244.350. (1) The Oregon Government Ethics Commission may impose civil penalties not to exceed:

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

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

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

(d) **Two times the amount of the penalty provision for violating a nondisclosure agree-**

ment that is contained within each nondisclosure agreement entered into in violation of section 3 of this 2019 Act.

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

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

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

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

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

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

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

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

Approved by the Governor June 20, 2019
Filed in the office of Secretary of State June 24, 2019
Effective date June 20, 2019
