

## CHAPTER 637

AN ACT

HB 2983

Relating to campaign finance; creating new provisions; amending ORS 260.005, 260.044, 260.055, 260.218 and 260.402; and declaring an emergency.

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

**SECTION 2.** As used in sections 2 to 4 of this 2019 Act:

(1) "Anonymous donation" means a donation for which the covered organization does not possess the donor name or address that is required under section 3 of this 2019 Act.

(2) "Communication in support of or in opposition to a clearly identified candidate or measure" has the meaning given that phrase in ORS 260.005 (10)(c).

(3) "Covered organization" means a combination of two or more individuals, or a person other than an individual, political committee, petition committee or a not-for-profit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code, that both accepts donations and makes political communications.

(4)(a) "Donation" means the gift or transfer of moneys or any other item of value to a covered organization, including any membership fees, dues or assessments.

(b) "Donation" does not include moneys or any other item of value received by a covered organization in the ordinary course of a trade or business conducted by the covered organization.

(5) "Donor" means a person that makes a donation to a covered organization.

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

(7) "Electioneering threshold for a legislative race" means political communications made by a covered organization of less than \$25,000 for a particular seat of the Legislative Assembly.

(8)(a) Except as provided in paragraphs (b) and (c) of this subsection, "electioneering threshold for a measure" means political communications made by a covered organization of less than \$100,000 for a particular measure.

(b) For a city measure in a city with a population of less than 60,000, "electioneering threshold for a measure" means political communications made by a covered organization of less than \$25,000 for a particular city measure.

(c) For a county measure in a county with a population of less than 60,000, "electioneering threshold for a measure" means political communications made by a covered organization of

less than \$25,000 for a particular county measure.

(9) "Electioneering threshold for a political committee" means political communications made by a covered organization of less than \$100,000 for a particular political committee.

(10) "Electioneering threshold for a statewide race" means political communications made by a covered organization of less than \$100,000 for a particular state office as defined in ORS 249.215.

(11)(a) "Political communication" means a communication in support of or in opposition to a clearly identified candidate or measure.

(b) "Political communication" does not include:

(A) A communication by a covered organization to its current members, stockholders or executive or administrative personnel;

(B) A communication that constitutes lobbying as defined in ORS 171.725; or

(C) A communication excluded from the definition of "expenditure" under ORS 260.007.

**SECTION 3.** (1)(a) Except as provided in subsection (5) of this section, a covered organization that during an election cycle exceeds the electioneering threshold for a legislative race, the electioneering threshold for a measure, the electioneering threshold for a political committee or the electioneering threshold for a statewide race shall file with the Secretary of State an initial donor identification list containing the name, address and aggregate amount donated of each donor that donated an aggregate amount of \$10,000 or more to the covered organization during that election cycle.

(b) A covered organization that is required to file an initial donor identification list under this subsection shall file the list no later than seven calendar days after the covered organization makes a political communication that requires the covered organization to make a filing under paragraph (a) of this subsection.

(2)(a) A covered organization that filed an initial donor identification list under subsection (1) of this section shall, during that election cycle, update the list by filing with the Secretary of State:

(A) The name, address and aggregate amount donated of each subsequent donor that makes a donation or aggregate donations of \$10,000 or more to the covered organization during that election cycle; and

(B) An updated amount of the aggregate donations the covered organization has received during the election cycle from each donor that was previously listed on an initial donor identification list or updated donor identification list filed under this section.

(b) An updated donor identification list filed under this subsection must be filed according to the time frame for filing a statement of inde-

pendent communications under ORS 260.044, except that the time frame for filing starts on the day that:

(A) The dollar amount received by the covered organization from a single donor not previously on the list, whether by single donation or aggregate donations, equals \$10,000 or more; or

(B) The covered organization receives an additional donation from a donor that was previously listed on an initial donor identification list or updated donor identification list filed under this section.

(3) Each initial donor identification list and updated donor identification list filed under this section must be signed and certified as true by an authorized representative of the covered organization. Signatures must be supplied in the manner specified by the Secretary of State by rule.

(4) The Secretary of State shall, upon request, deliver to any person the initial donor identification lists and updated donor identification lists filed under this section. If the Secretary of State receives a request under this subsection, the Secretary of State shall deliver the lists not later than five days after receiving the request.

(5) In identifying donors who have made aggregate donations of \$10,000 or more in the manner described in subsections (1) and (2) of this section, a covered organization may exclude:

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

(b) Donations and grants received from foundations and other donors that may not be used for political communications.

(6) A covered organization must consider an anonymous donation of \$1,000 or more from a single donor to be a donation that may not be used for political communications.

(7) The Secretary of State may enact rules necessary to implement this section.

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

(a) Timely file an initial donor identification list required to be filed under section 3 of this 2019 Act;

(b) Timely file an updated donor identification list required to be filed under section 3 of this 2019 Act; or

(c) Include all donors or amounts donated that are required to be included in an initial donor identification list or an updated donor identification list that is required to be filed under section 3 of this 2019 Act.

(2)(a) For each failure to timely file an initial donor identification list that is required to be filed under section 3 of this 2019 Act for exceeding the electioneering threshold for a legislative race, the Secretary of State may impose a civil penalty not to exceed the lesser of:

(A) 10 percent per day of the total cost for political communications made by the covered organization for the applicable legislative race; or

(B) 150 percent of the total cost for political communications made by the covered organization for the applicable legislative race.

(b) For each failure to timely file an initial donor identification list that is required to be filed under section 3 of this 2019 Act for exceeding the electioneering threshold for a measure, the Secretary of State may impose a civil penalty not to exceed the lesser of:

(A) 10 percent per day of the total cost for political communications made by the covered organization for the applicable measure; or

(B) 150 percent of the total cost for political communications made by the covered organization for the applicable measure.

(c) For each failure to timely file an initial donor identification list that is required to be filed under section 3 of this 2019 Act for exceeding the electioneering threshold for a political committee, the Secretary of State may impose a civil penalty not to exceed the lesser of:

(A) 10 percent per day of the total cost for political communications made by the covered organization for the applicable political committee; or

(B) 150 percent of the total cost for political communications made by the covered organization for the applicable political committee.

(d) For each failure to timely file an initial donor identification list that is required to be filed under section 3 of this 2019 Act for exceeding the electioneering threshold for a statewide race, the Secretary of State may impose a civil penalty not to exceed the lesser of:

(A) 10 percent per day of the total cost for political communications made by the covered organization for the applicable statewide race; or

(B) 150 percent of the total cost for political communications made by the covered organization for the applicable statewide race.

(3) For each failure to accurately include the name of a donor or the amount a donor donated to the covered organization in an initial donor identification list or an updated donor identification list that is required to be filed under section 3 of this 2019 Act, or for each failure to timely file an updated donor identification list that is required to be filed under section 3 of this 2019 Act, the Secretary of State may impose a civil penalty not to exceed 10 percent of the aggregate donations that were not properly identified.

(4) 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 for a notice of right to a hearing 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.

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

(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 (4) of this section; or

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

(6) 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 of State for entry in the hearing record. The testimony or other evidence must be received by the Secretary of State not later than three business days before the day of the hearing.

(7) 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 (5) 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.

(8) The Secretary of State 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.

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

(10) The Secretary of State may adopt rules necessary to implement this section.

**SECTION 5.** ORS 260.402 is amended to read:

260.402. (1) A person may not **directly or indirectly reimburse a person for making a contribution or donation, or** make a contribution **or donation** in any name other than that of the person *[who]* that in truth provides the contribution **or donation, to:**

(a) Any other person, relating to a nomination or election of any candidate or the support of or opposition to any measure;

(b) Any political committee; *[or]*

(c) **Any covered organization required to file a donor identification list under section 3 of this 2019 Act; or**

*[(c)]* (d) A petition committee required to file a statement under ORS 260.118.

(2) Except as provided in subsection (3) of this section, a person, political committee, **covered organization** or petition committee may not knowingly receive a contribution **or donation** prohibited under subsection (1) of this section or enter or cause the contribution **or donation** to be entered in accounts or records in another name than that of the person *[by whom it was]* that actually provided the **contribution or donation.**

(3) If a person receives a contribution from a political committee, the person may enter the contribution into accounts or records as received from the political committee.

(4) **As used in this section, "covered organization" and "donation" have the meanings given those terms in section 2 of this 2019 Act.**

**SECTION 6.** ORS 260.218 is amended to read:

260.218. (1) The Secretary of State, **or the Attorney General acting under ORS 260.345,** may issue subpoenas to compel the production of records, documents, books, papers, memoranda or other information necessary to determine compliance with the provisions of this chapter.

(2) If a person fails to comply with any subpoena issued under subsection (1) of this section, a judge of the circuit court of any county, on application of the Secretary of State **or Attorney General,** shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the circuit court.

**SECTION 7.** ORS 260.005, as amended by section 14, chapter 70, Oregon Laws 2018, is amended to read:

260.005. As used in this chapter:

(1)(a) "Candidate" means:

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

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

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

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

(2) “Committee director” means any person who directly and substantially participates in decision-making on behalf of a political committee concerning the solicitation or expenditure of funds and the support of or opposition to candidates or measures. The officers of a political party shall be considered the directors of any political party committee of that party, unless otherwise provided in the party’s by-laws.

(3) Except as provided in ORS 260.007, “contribution” or “contribution” includes:

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

(A) For the purpose of influencing an election for public office or an election on a measure, or of reducing the debt of a candidate for nomination or election to public office or the debt of a political committee; or

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

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

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

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

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

(5) “Controlled directly or indirectly by a candidate” means:

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

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

(6) “County clerk” means the county clerk or the county official in charge of elections.

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

(8) Except as provided in ORS 260.007, “expend” or “expenditure” includes the payment or furnishing of money or anything of value or the incurring or repayment of indebtedness or obligation by or on behalf of a candidate, political committee or person in consideration for any services, supplies, equipment or other thing of value performed or furnished for any reason, including support of or opposition to a candidate, political committee or measure, or for reducing the debt of a candidate for nomination or

election to public office. “Expenditure” also includes contributions made by a candidate or political committee to or on behalf of any other candidate or political committee.

(9) “Filing officer” means:

(a) The Secretary of State:

(A) Regarding a candidate for public office;

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

(C) Regarding any measure; or

(D) Regarding any political committee.

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

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

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

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

(10) “Independent expenditure” means an expenditure by a person for a communication in support of or in opposition to a clearly identified candidate or measure that is not made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate, or any political committee or agent of a political committee supporting or opposing a measure. For purposes of this subsection:

(a) “Agent” means any person who has:

(A) Actual oral or written authority, either express or implied, to make or to authorize the making of expenditures on behalf of a candidate or on behalf of a political committee supporting or opposing a measure; or

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

(b)(A) “Clearly identified” means, with respect to candidates:

(i) The name of the candidate involved appears;

(ii) A photograph or drawing of the candidate appears; or

(iii) The identity of the candidate is apparent by unambiguous reference.

(B) “Clearly identified” means, with respect to measures:

(i) The ballot number of the measure appears;

(ii) A description of the measure’s subject or effect appears; or

(iii) The identity of the measure is apparent by unambiguous reference.

(c) “Communication in support of or in opposition to a clearly identified candidate or measure” means:

(A)(i) The communication, **when** taken [*in its context, clearly and unambiguously urges*] **as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy for the election or defeat of a clearly identified candidate for nomination or election to public office, or the passage or defeat of a clearly identified measure; and**

*[(ii) The communication, as a whole, seeks action rather than simply conveying information; and]*

*[(iii) It is clear what action the communication advocates; or]*

**(ii) The electoral portion of the communication is unmistakable, unambiguous and suggestive of only one meaning; or**

(B)(i) The communication [*contains*] **involves** aggregate expenditures of more than [~~\$750~~] **\$250** by a person;

(ii) The communication refers to a clearly identified candidate [*who*] **or measure that** will appear on the ballot or to a political party; and

(iii) The communication is published and disseminated to the relevant electorate within [~~30~~] **60** calendar days before a primary election, [~~or 60~~] **120** calendar days before a general election **or 90 calendar days before an election other than a primary election or a general election.**

(d) “Made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate, or any political committee or agent of a political committee supporting or opposing a measure”:

(A) Means any arrangement, coordination or direction by the candidate or the candidate’s agent, or by any political committee or agent of a political committee supporting or opposing a measure, prior to the publication, distribution, display or broadcast of the communication. An expenditure shall be presumed to be so made when it is:

(i) Based on information about the plans, projects or needs of the candidate, or of the political committee supporting or opposing a measure, and provided to the expending person by the candidate or by the candidate’s agent, or by any political committee or agent of a political committee supporting or opposing a measure, with a view toward having an expenditure made; or

(ii) Made by or through any person who is or has been authorized to raise or expend funds, who is or has been an officer of a political committee authorized by the candidate or by a political committee or agent of a political committee supporting or opposing a measure, or who is or has been receiving any form of compensation or reimbursement from the candidate, the candidate’s principal campaign committee or agent or from any political committee or agent of a political committee supporting or opposing a measure.

(B) Does not mean providing to the expending person upon request a copy of this chapter or any

rules adopted by the Secretary of State relating to independent expenditures.

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

(12) “Judge” means judge of the Supreme Court, Court of Appeals, circuit court or the Oregon Tax Court.

(13) “Mass mailing” means more than 200 substantially similar pieces of mail, but does not include a form letter or other mail that is sent in response to an unsolicited request, letter or other inquiry.

(14) “Measure” includes any of the following submitted to the people for their approval or rejection at an election:

(a) A proposed law.

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

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

(d) Local, special or municipal legislation.

(e) A proposition or question.

(15) “Occupation” means:

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

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

(16) “Person” means an individual, corporation, limited liability company, labor organization, association, firm, partnership, joint stock company, club, organization or other combination of individuals having collective capacity.

(17) “Petition committee” means an initiative, referendum or recall petition committee organized under ORS 260.118.

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

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

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

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

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

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

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

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

(22) “Regular district election” means the regular district election described in ORS 255.335.

(23) “State office” means the office of Governor, Secretary of State, State Treasurer, Attorney General, Commissioner of the Bureau of Labor and Industries, state Senator, state Representative, judge or district attorney.

**SECTION 8.** ORS 260.044, as amended by section 2, chapter 70, Oregon Laws 2018, is amended to read:

260.044. (1) If a person makes independent expenditures in a total amount of more than [\$750] **\$250** in a calendar year, the person shall use the electronic filing system adopted under ORS 260.057 to file with the Secretary of State a statement of independent expenditures not later than seven calendar days after the total amount of independent expenditures exceeds [\$750] **\$250** in a calendar year.

(2) A person who files a statement of independent expenditures under subsection (1) of this section shall use the electronic filing system adopted under ORS 260.057 to file with the secretary additional statements of independent expenditures made by the person, as described in ORS 260.083.

(3) Except as provided in subsections (4) and (5) of this section, a person shall file a statement described in subsection (2) of this section not later than 30 calendar days after an independent expenditure is made.

(4)(a) A person shall file a statement described in subsection (2) of this section not later than seven calendar days after an independent expenditure is made. This paragraph applies to independent expenditures made:

(A) During the period beginning on the 42nd calendar day before the date of any primary election and ending on the date of the primary election; and

(B) During the period beginning on the 42nd calendar day before the date of any general election and ending on the date of the general election.

(b) If the person makes an independent expenditure prior to the 42nd calendar day before the date of the primary or general election and the person has not filed a statement under subsection (3) of this section by the 43rd calendar day before the date of the primary or general election, the person shall file a statement described in subsection (2) of this section not later than whichever of the following dates occurs first:

(A) The date required under subsection (3) of this section; or

(B) The 35th calendar day before the date of the primary or general election.

(5) For any special election, the secretary by rule may establish a period during which a person must file a statement described in subsection (2) of this section. The period may not extend beyond seven calendar days after an independent expenditure is made.

(6) Notwithstanding ORS 260.005 (18), a person who solicits and receives a contribution or contributions is a political committee and shall file a

statement of organization under ORS 260.042 and the statements required by ORS 260.057, 260.076 or 260.078.

(7) For purposes of this section:

(a) An independent expenditure does not include a contribution to a candidate or political committee that is required to report the contribution on a statement filed under ORS 260.057, 260.076 or 260.078 or a certificate filed under ORS 260.112;

(b) An independent expenditure does not include a contribution to a candidate who is not required to file a statement of organization under ORS 260.043; and

(c) A person is not a political committee under subsection (6) of this section if all contributions received by the person are:

(A) Designated to an identified candidate or political committee;

(B) Delivered by the person to the designated candidate or political committee not later than seven business days after the contribution is received; and

(C) Required to be reported as contributions by a candidate or political committee on a statement filed under ORS 260.057, 260.076 or 260.078 or a certificate filed under ORS 260.112.

**SECTION 9.** ORS 260.055 is amended to read:

260.055. (1)(a) Each candidate, [*other than a candidate for political party office,*] the treasurer of each political committee, [*and*] the treasurer of each petition committee **and each person that makes independent expenditures in a total amount of more than \$250 in a calendar year** shall keep detailed accounts. The accounts shall be current as of not later than the seventh business day after the date of receiving a contribution or making an expenditure **or independent expenditure** with respect to all contributions received and all expenditures **or independent expenditures** made by or on behalf of the candidate or committee that are required to be reported under ORS **260.044**, 260.057, 260.076 or 260.078. Subject to ORS 260.085, the accounts shall list all information required to be reported under ORS 260.083.

**(b) This subsection does not apply to candidates for political party office.**

(2) Accounts kept by a candidate [*or the*], a treasurer of a political committee, **a treasurer of a petition committee or a person that makes independent expenditures in a total amount of more than \$250 in a calendar year** may be inspected under reasonable circumstances at any time before the election to which the accounts refer or during the period specified for retention of the accounts under subsection (3) of this section by any opposing candidate or the treasurer of any political committee for the same electoral contest. The right of inspection may be enforced by writ of mandamus issued by any court of competent jurisdiction. The treasurers of political committees supporting a candidate may be joined with the candidate as defendants in a mandamus proceeding.

(3) Accounts kept by a candidate [*or treasurer*], a treasurer of a political committee, a treasurer of a petition committee or a person that makes independent expenditures in a total amount of more than \$250 in a calendar year shall be preserved by the candidate, [*or*] treasurer or person for at least two years after the date the statement of the contribution or expenditure is filed under ORS 260.057 or the independent expenditure is made.

**SECTION 10.** It is the intent of the Legislative Assembly that all parts of this 2019 Act are independent and that if any part of this 2019 Act is held unconstitutional, all remaining parts shall remain in force.

**SECTION 11.** Sections 2 to 4 of this 2019 Act and the amendments to ORS 260.005, 260.044,

260.055, 260.218 and 260.402 by sections 5 to 9 of this 2019 Act apply to:

(1) All independent expenditures and donations made on or after the effective date of this 2019 Act; and

(2) All donations made or transferred, and investigations of donations conducted, on or after the effective date of this 2019 Act.

**SECTION 12.** 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 August 2, 2019

Filed in the office of Secretary of State August 7, 2019

Effective date August 2, 2019

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