

A-Engrossed
House Bill 2351

Ordered by the House April 25
Including House Amendments dated April 25

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Secretary of State Jeanne P. Atkins)

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 *[individual]* **person**, political committee or petition committee that receives request for information or documentation from Secretary of State, Attorney General or filing officer pursuant to campaign finance investigation to produce requested information or documentation within *[30]* **45** calendar days.

Permits use of campaign moneys in connection with *[most]* legal proceedings relating to *[elections law]* **campaign activities of candidate, political committee or petition committee, or to official duties of public official.**

[Establishes civil penalty of \$150 for instances where person signs ballot belonging to different elector but Secretary of State or Attorney General determines that improper signature was not made with intent to commit fraud.]

Establishes civil penalty of up to 10 percent of campaign moneys improperly converted to personal use in circumstances where conversion is accurately included in timely filed statements of contributions and statements of expenditures.

A BILL FOR AN ACT

1
2 Relating to campaign finance; creating new provisions; and amending ORS 260.345, 260.407 and
3 260.995.

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

5 **SECTION 1.** ORS 260.345 is amended to read:

6 260.345. (1) Any elector may file with any filing officer a written complaint alleging that a vio-
7 lation of an election law or rule adopted by the Secretary of State under ORS chapters 246 to 260
8 has occurred and stating the reason for believing that the violation occurred and any evidence re-
9 lating to it. A complaint and any evidence relating to it may be filed electronically. A complaint
10 alleging a violation involving the Secretary of State, a candidate for the office of Secretary of State,
11 or any political committee or person supporting the Secretary of State or a candidate for the office
12 of Secretary of State may be filed with the Attorney General. The Secretary of State or Attorney
13 General shall not accept an anonymous complaint.

14 (2) The Secretary of State by rule shall prescribe the procedure for processing a complaint filed
15 with any person other than the Secretary of State. If the complaint concerns the Secretary of State,
16 any candidate for the office of the Secretary of State, or any political committee or person sup-
17 porting the candidacy of the Secretary of State or of another person for the office of Secretary of
18 State, the complaint and any additional information relating to the complaint shall be sent to the
19 Attorney General.

20 (3) Upon receipt of a complaint under subsection (1) or (2) of this section the Secretary of State
21 or Attorney General immediately shall examine the complaint to determine whether a violation of

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 an election law or rule has occurred and shall make any investigation the Secretary of State or
 2 Attorney General considers necessary. Except as provided in this subsection, within 48 hours of
 3 receiving a complaint under subsection (1) or (2) of this section, the Secretary of State or Attorney
 4 General shall notify the person who is the subject of the complaint that a complaint has been re-
 5 ceived. If the Secretary of State or Attorney General receives a complaint or complaints involving
 6 25 or more individuals, political committees or petition committees in any 24-hour period, the Sec-
 7 retary of State or Attorney General need not notify the persons who are the subjects of those
 8 complaints within 48 hours of receiving the complaints but shall notify those persons not later than
 9 10 business days after receiving the complaint or complaints.

10 **(4) A person, political committee or petition committee that receives a request for in-**
 11 **formation or documentation pursuant to an investigation under subsection (3) of this section**
 12 **or ORS 260.234 shall provide the requested information or documentation to the Secretary**
 13 **of State, Attorney General or filing officer not later than 45 calendar days after the service**
 14 **date of the request.**

15 [(4)] (5) If the Secretary of State believes after an investigation under subsection (3) of this
 16 section that a violation of an election law or rule has occurred, the secretary:

17 (a) In the case of a violation that is subject to a penalty under ORS 260.993, immediately shall
 18 report the findings to the Attorney General and request prosecution. If the violation involves the
 19 Attorney General, a candidate for that office or a political committee or person supporting or op-
 20 posing the Attorney General or a candidate for that office, the Secretary of State shall appoint an-
 21 other prosecutor for that purpose; or

22 (b) In the case of a violation not subject to a penalty under ORS 260.993, may impose a civil
 23 penalty under ORS 260.995.

24 [(5)] (6) Upon receipt of a complaint or report under subsection (1), (2) or [(4)] (5) of this section
 25 involving an alleged violation subject to a penalty under ORS 260.993, the Attorney General or other
 26 prosecutor immediately shall examine the complaint or report to determine whether a violation of
 27 an election law has occurred. If the Attorney General or prosecutor determines that a violation has
 28 occurred, the Attorney General or prosecutor immediately shall begin prosecution in the name of
 29 the state. The Attorney General or other prosecutor shall have the same powers in any county of
 30 this state as the district attorney for the county.

31 [(6)] (7) Upon receipt of a complaint under subsection (1) or (2) of this section involving an al-
 32 leged violation of an election law or rule not subject to a penalty under ORS 260.993, the Attorney
 33 General shall examine the complaint to determine whether a violation of an election law or rule has
 34 occurred and shall make any investigation the Attorney General considers necessary. If the Attor-
 35 ney General believes after an investigation that a violation of an election law or rule has occurred,
 36 the Attorney General may impose a civil penalty under ORS 260.995.

37 [(7)] (8) In the case of an alleged violation subject to a civil penalty under ORS 260.995, a
 38 complaint shall be filed by an elector under this section no later than 90 days following the election
 39 at which a violation of an election law or rule is alleged to have occurred, or 90 days following the
 40 date the violation of an election law or rule is alleged to have occurred, whichever is later.

41 [(8)] (9) A filing officer having reason to believe that a violation of an election law or rule has
 42 occurred shall proceed promptly as though the officer had received a complaint. Except as provided
 43 in ORS 260.234, a filing officer shall proceed under this subsection no later than two years following
 44 the election at which a violation of an election law or rule is alleged to have occurred, or two years
 45 following the date the violation of an election law or rule is alleged to have occurred, whichever is

1 later. If a filing officer has not proceeded within two years because of fraud, deceit, misleading
2 representation or the filing officer could not have reasonably discovered the alleged violation, the
3 filing officer shall proceed no later than five years following the election at which a violation of an
4 election law or rule is alleged to have occurred, or five years following the date the violation of an
5 election law or rule is alleged to have occurred, whichever is later.

6 **SECTION 2.** ORS 260.407 is amended to read:

7 260.407. (1)(a) Except as provided in paragraph (b) of this subsection, amounts received as con-
8 tributions by a candidate or the principal campaign committee of a candidate for public office that
9 are in excess of any amount necessary to defray expenditures and any other funds donated to a
10 holder of public office may be:

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

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

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

16 (D) Used for any other lawful purpose.

17 (b) Amounts received as contributions by a candidate or the principal campaign committee of a
18 candidate for public office that are in excess of any amount necessary to defray expenditures and
19 other funds donated to a holder of public office may not be:

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

23 (B) Except as provided in this subparagraph, used to pay any money award as defined in ORS
24 18.005 included as part of a judgment in a civil or criminal action or any civil penalty imposed by
25 an agency as defined in ORS 183.310 or by a local government as defined in ORS 174.116. Contri-
26 butions described in this paragraph may be used to pay a civil penalty imposed under this chapter,
27 other than a civil penalty imposed for a violation of this section or ORS 260.409; or

28 (C) Except as provided in this subparagraph, used to pay any legal expenses incurred by the
29 candidate or public official in any civil, criminal or other legal proceeding or investigation that re-
30 lates to or arises from the course and scope of the duties of the person as a candidate or public
31 official. Contributions described in this paragraph may be used to pay legal expenses incurred by
32 the candidate or public official in connection with a legal proceeding [*brought under this chapter*]
33 **related to the campaign activities of the candidate or the official duties of the public**
34 **official**, other than a proceeding brought under this section or ORS 260.409.

35 (2)(a) Except as provided in paragraph (b) of this subsection, amounts received as contributions
36 by a political committee that is not a principal campaign committee that are in excess of any
37 amount necessary to defray expenditures may be:

38 (A) Used to repay to the political committee any loan the proceeds of which were used in con-
39 nection with the campaign;

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

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

43 (D) Used for any other lawful purpose.

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

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

1 (B) Except as provided in this subparagraph, used to pay any money award as defined in ORS
2 18.005 included as part of a judgment in a civil or criminal action or any civil penalty imposed by
3 an agency as defined in ORS 183.310 or by a local government as defined in ORS 174.116. Contri-
4 butions described in this subsection may be used to pay a civil penalty imposed under this chapter,
5 other than a civil penalty imposed for a violation of this section or ORS 260.409; or

6 (C) Except as provided in this subparagraph, used to pay any legal expenses incurred by a
7 treasurer or director of a political committee in any civil, criminal or other legal proceeding or in-
8 vestigation that relates to or arises from the course and scope of the duties of the person as a
9 treasurer or director. Contributions described in this subsection may be used to pay legal expenses
10 incurred by a treasurer or director in connection with a legal proceeding [*brought under this*
11 *chapter*] **related to the campaign activities of the political committee**, other than a proceeding
12 brought under this section or ORS 260.409.

13 (3)(a) Except as provided in paragraph (b) of this subsection, amounts received as contributions
14 by a chief petitioner or treasurer of a petition committee that are in excess of any amount necessary
15 to defray expenditures may be:

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

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

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

21 (D) Used for any other lawful purpose.

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

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

25 (B) Except as provided in this subparagraph, used to pay any money award as defined in ORS
26 18.005 included as part of a judgment in a civil or criminal action or any civil penalty imposed by
27 an agency as defined in ORS 183.310 or by a local government as defined in ORS 174.116. Contri-
28 butions described in this subsection may be used to pay a civil penalty imposed under this chapter,
29 other than a civil penalty imposed for a violation of this section or ORS 260.409; or

30 (C) Except as provided in this subparagraph, used to pay any legal expenses incurred by a chief
31 petitioner or the treasurer of a petition committee in any civil, criminal or other legal proceeding
32 or investigation that relates to or arises from the course and scope of the duties of the person as
33 a chief petitioner or treasurer. Contributions described in this subsection may be used to pay legal
34 expenses incurred by a chief petitioner or treasurer in connection with a legal proceeding [*brought*
35 *under this chapter*] **related to the campaign activities of the petition committee**, other than a
36 proceeding brought under this section or ORS 260.409.

37 (4) As used in this section:

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

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

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

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

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

7 (2)(a) **Except as provided in paragraph (b) of this subsection**, the secretary or the Attorney
8 General may impose a civil penalty not to exceed:

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

10 or

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

13 **(b) For each violation of ORS 260.407 in which the improper conversion of moneys for**
14 **personal use is accurately recorded in statements of contributions received and statements**
15 **of expenditures made that are timely filed under this chapter, the secretary or the Attorney**
16 **General may impose a civil penalty not to exceed 10 percent of the amount converted to**
17 **personal use.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 **SECTION 4. The amendments to ORS 260.345, 260.407 and 260.995 by sections 1 to 3 of this**
8 **2017 Act apply to requests for information and documents made and campaign moneys used**
9 **or converted on or after the effective date of this 2017 Act.**

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