

House Bill 2351

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 **as introduced**.

Requires individual, 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 calendar days.

Permits use of campaign moneys in connection with most legal proceedings relating to elections law.

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, 260.993
3 and 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
22 an election law or rule has occurred and shall make any investigation the Secretary of State or
23 Attorney General considers necessary. Except as provided in this subsection, within 48 hours of
24 receiving a complaint under subsection (1) or (2) of this section, the Secretary of State or Attorney
25 General shall notify the person who is the subject of the complaint that a complaint has been re-

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 ceived. If the Secretary of State or Attorney General receives a complaint or complaints involving
2 25 or more individuals, political committees or petition committees in any 24-hour period, the Sec-
3 retary of State or Attorney General need not notify the persons who are the subjects of those
4 complaints within 48 hours of receiving the complaints but shall notify those persons not later than
5 10 business days after receiving the complaint or complaints.

6 **(4) An individual, political committee or petition committee that receives a request for**
7 **information or documentation pursuant to an investigation under subsection (3) of this sec-**
8 **tion or ORS 260.234 shall provide the requested information or documentation to the Secre-**
9 **tary of State, Attorney General or filing officer not later than 30 calendar days after**
10 **receiving the request.**

11 [(4)] (5) If the Secretary of State believes after an investigation under subsection (3) of this
12 section that a violation of an election law or rule has occurred, the secretary:

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

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

20 [(5)] (6) Upon receipt of a complaint or report under subsection (1), (2) or [(4)] (5) of this section
21 involving an alleged violation subject to a penalty under ORS 260.993, the Attorney General or other
22 prosecutor immediately shall examine the complaint or report to determine whether a violation of
23 an election law has occurred. If the Attorney General or prosecutor determines that a violation has
24 occurred, the Attorney General or prosecutor immediately shall begin prosecution in the name of
25 the state. The Attorney General or other prosecutor shall have the same powers in any county of
26 this state as the district attorney for the county.

27 [(6)] (7) Upon receipt of a complaint under subsection (1) or (2) of this section involving an al-
28 leged violation of an election law or rule not subject to a penalty under ORS 260.993, the Attorney
29 General shall examine the complaint to determine whether a violation of an election law or rule has
30 occurred and shall make any investigation the Attorney General considers necessary. If the Attor-
31 ney General believes after an investigation that a violation of an election law or rule has occurred,
32 the Attorney General may impose a civil penalty under ORS 260.995.

33 [(7)] (8) In the case of an alleged violation subject to a civil penalty under ORS 260.995, a
34 complaint shall be filed by an elector under this section no later than 90 days following the election
35 at which a violation of an election law or rule is alleged to have occurred, or 90 days following the
36 date the violation of an election law or rule is alleged to have occurred, whichever is later.

37 [(8)] (9) A filing officer having reason to believe that a violation of an election law or rule has
38 occurred shall proceed promptly as though the officer had received a complaint. Except as provided
39 in ORS 260.234, a filing officer shall proceed under this subsection no later than two years following
40 the election at which a violation of an election law or rule is alleged to have occurred, or two years
41 following the date the violation of an election law or rule is alleged to have occurred, whichever is
42 later. If a filing officer has not proceeded within two years because of fraud, deceit, misleading
43 representation or the filing officer could not have reasonably discovered the alleged violation, the
44 filing officer shall proceed no later than five years following the election at which a violation of an
45 election law or rule is alleged to have occurred, or five years following the date the violation of an

1 election law or rule is alleged to have occurred, whichever is later.

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

3 260.407. (1)(a) Except as provided in paragraph (b) of this subsection, amounts received as con-
 4 tributions by a candidate or the principal campaign committee of a candidate for public office that
 5 are in excess of any amount necessary to defray expenditures and any other funds donated to a
 6 holder of public office may be:

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

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

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

12 (D) Used for any other lawful purpose.

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

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

19 (B) Except as provided in this subparagraph, used to pay any money award as defined in ORS
 20 18.005 included as part of a judgment in a civil or criminal action or any civil penalty imposed by
 21 an agency as defined in ORS 183.310 or by a local government as defined in ORS 174.116. Contri-
 22 butions described in this paragraph may be used to pay a civil penalty imposed under this chapter,
 23 other than a civil penalty imposed for a violation of this section or ORS 260.409; or

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

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

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

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

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

38 (D) Used for any other lawful purpose.

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

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

41 (B) Except as provided in this subparagraph, used to pay any money award as defined in ORS
 42 18.005 included as part of a judgment in a civil or criminal action or any civil penalty imposed by
 43 an agency as defined in ORS 183.310 or by a local government as defined in ORS 174.116. Contri-
 44 butions described in this subsection may be used to pay a civil penalty imposed under this chapter,
 45 other than a civil penalty imposed for a violation of this section or ORS 260.409; or

1 (C) Except as provided in this subparagraph, used to pay any legal expenses incurred by a
 2 treasurer or director of a political committee in any civil, criminal or other legal proceeding or in-
 3 vestigation that relates to or arises from the course and scope of the duties of the person as a
 4 treasurer or director. Contributions described in this subsection may be used to pay legal expenses
 5 incurred by a treasurer or director in connection with a legal proceeding brought under [*this*
 6 *chapter*] **ORS chapters 246 to 260**, other than a proceeding brought under this section or ORS
 7 260.409.

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

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

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 chief petitioner or treasurer of a petition committee
 18 may not be:

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

20 (B) Except as provided in this subparagraph, used to pay any money award as defined in ORS
 21 18.005 included as part of a judgment in a civil or criminal action or any civil penalty imposed by
 22 an agency as defined in ORS 183.310 or by a local government as defined in ORS 174.116. Contri-
 23 butions described in this subsection may be used to pay a civil penalty imposed under this chapter,
 24 other than a civil penalty imposed for a violation of this section or ORS 260.409; or

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

32 (4) As used in this section:

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

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

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

41 **SECTION 3.** ORS 260.993 is amended to read:

42 260.993. (1) The penalty for violation of ORS 260.532 is limited to that provided in ORS 260.532
 43 (6) and (8).

44 (2)(a) **Except as provided in paragraph (b) of this subsection**, violation of ORS 247.125 (1),
 45 247.171 (5), 247.420 (2), 253.710, 260.402, 260.555, 260.558, 260.575, 260.645 or 260.665 (2) or (3) in-

1 involving any action described in ORS 260.665 (2)(d) to (f) or 260.715 is a Class C felony.

2 **(b) For a first-time violation of ORS 260.715 (1) that results from a person signing a ballot**
 3 **belonging to a different elector, the Secretary of State or Attorney General may impose a**
 4 **civil penalty of \$150 if the secretary or the Attorney General determines that the violation**
 5 **was not made with the intent to commit fraud.**

6 (3) Violation of ORS 260.695 (4) is a Class A misdemeanor.

7 (4) Violation of ORS 247.171 (6) is a Class C misdemeanor.

8 **SECTION 4.** ORS 260.995 is amended to read:

9 260.995. (1) Except as provided in subsection (2) of this section, following an investigation under
 10 ORS 260.345, the Secretary of State or Attorney General may impose a civil penalty not to exceed
 11 \$1,000 for each violation of any provision of Oregon Revised Statutes relating to the conduct of any
 12 election, any rule adopted by the secretary under ORS chapters 246 to 260 or any other matter
 13 preliminary to or relating to an election, for which a civil penalty is not otherwise provided.

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

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

17 or

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

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

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

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

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

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

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

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

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

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

1 the person against whom the penalty may be assessed, a hearing under subsection (4) of this section
2 shall be held not later than 60 days after the deadline for the person against whom the penalty may
3 be assessed to request a hearing.

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

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

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

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

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

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

14 **SECTION 5. The amendments to ORS 260.345, 260.407, 260.993 and 260.995 by sections 1**
15 **to 4 of this 2017 Act apply to requests for information and documents made, ballots signed**
16 **and campaign moneys used or converted on or after the effective date of this 2017 Act.**

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