

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 1183

Introduced by Beutler, 28

Read first time January 21, 2004

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to political accountability and disclosure; to
2 amend sections 32-1601 and 32-1606, Reissue Revised
3 Statutes of Nebraska, and sections 32-1603, 32-1604,
4 32-1604.01, 32-1608, 49-1463.01, 49-14,124, and
5 49-14,125, Revised Statutes Supplement, 2002; to redefine
6 a term; to change provisions regarding campaign
7 expenditures and public funds; to provide for late fees;
8 to change powers and duties of the Nebraska
9 Accountability and Disclosure Commission; to eliminate
10 unconstitutional provisions; to harmonize provisions; to
11 repeal the original sections; and to outright repeal
12 section 32-1614, Reissue Revised Statutes of Nebraska.
13 Be it enacted by the people of the State of Nebraska,

1 Section. 1. Section 32-1601, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 32-1601. Sections 32-1601 to ~~32-1614~~ 32-1613 shall be
4 known and may be cited as the Campaign Finance Limitation Act.

5 Sec. 2. Section 32-1603, Revised Statutes Supplement,
6 2002, is amended to read:

7 32-1603. For purposes of the Campaign Finance Limitation
8 Act, the definitions found in sections 49-1404 to 49-1444 shall be
9 used, except that:

10 (1) Covered elective office means (a) the Legislature in
11 any election period and (b) the Governor, State Treasurer,
12 Secretary of State, Attorney General, Auditor of Public Accounts,
13 the Public Service Commission, the Board of Regents of the
14 University of Nebraska, and the State Board of Education if
15 designated as covered for a given election period pursuant to
16 section 32-1611;

17 (2) Election period means (a) the period beginning
18 January 1 of the calendar year prior to the year of the election in
19 which the candidate is seeking office through the end of the
20 calendar year of such election for covered elective offices listed
21 in subdivision (1)(a) of this section and (b) the period beginning
22 July 1 of the calendar year prior to the year of the election in
23 which the candidate is seeking office through the end of the
24 calendar year of such election for covered elective offices listed
25 in subdivision (1)(b) of this section;

26 (3) Expenditure means (a) the purchase for campaign
27 activities of ~~(a)~~ (i) services from a communications medium,
28 including production costs, ~~(b)~~ (ii) printing, photography, graphic

1 arts, or advertising services, ~~(e)~~ (iii) office supplies, ~~(d)~~ (iv)
2 postage and other commercial delivery services, ~~(e)~~ (v) meals,
3 lodging, and travel expenses, and ~~(f)~~ (vi) staff salaries and (b)
4 repayment of loans to the candidate committee made for any of the
5 purposes listed in subdivision (a) of this subdivision;

6 (4) General election period means the period beginning
7 with the day following the end of the primary election period
8 through the end of the election period;

9 (5) Primary election period means the period beginning
10 with the first day of the election period through the thirty-fifth
11 day following the primary election; and

12 (6) Unrestricted spending means expenditures or transfers
13 of funds authorized under subdivision (1)(f), (h), or (i) of
14 section 49-1446.01.

15 Sec. 3. Section 32-1604, Revised Statutes Supplement,
16 2002, is amended to read:

17 32-1604. (1) If the office is designated as covered for
18 a given election period pursuant to section 32-1611, any candidate
19 for Governor, State Treasurer, Secretary of State, Attorney
20 General, Auditor of Public Accounts, the Public Service Commission,
21 the Board of Regents of the University of Nebraska, or the State
22 Board of Education may qualify for public funds to be used for the
23 election period if he or she limits his or her campaign spending
24 for the election period and meets the other requirements prescribed
25 in this section.

26 (2) In any election period, any candidate for the
27 Legislature may qualify for public funds to be used for the
28 election period if he or she limits his or her campaign spending

1 for the election period and meets the other requirements prescribed
2 in this section.

3 (3) To qualify for public funds for the election period,
4 a candidate for Governor shall limit his or her spending, other
5 than unrestricted spending, for the election period to one million
6 six hundred fifty thousand dollars, a candidate for State
7 Treasurer, Secretary of State, Attorney General, or Auditor of
8 Public Accounts shall limit his or her spending, other than
9 unrestricted spending, for the election period to one hundred fifty
10 thousand dollars, a candidate for the Legislature shall limit his
11 or her spending, other than unrestricted spending, for the election
12 period to seventy-three thousand dollars, and a candidate for the
13 Public Service Commission, the Board of Regents of the University
14 of Nebraska, or the State Board of Education shall limit his or her
15 spending, other than unrestricted spending, for the election period
16 to fifty thousand dollars, and such candidates shall limit their
17 spending, other than unrestricted spending, for the primary
18 election period to not exceed fifty percent of the limits provided
19 in this subsection for the election period.

20 (4) Each candidate for a covered elective office desiring
21 to receive public funds pursuant to this section shall (a)
22 beginning the first day of the election period, raise an amount
23 equal to at least twenty-five percent of the spending limitation
24 for the office from persons who are residents of Nebraska and (b)
25 file with the Nebraska Accountability and Disclosure Commission an
26 affidavit pursuant to section 32-1604.01 indicating his or her
27 intent to abide by the spending limitations and his or her
28 agreement to personally act as a guarantor for the lawful use of

1 such funds and to be held personally liable to the State of
2 Nebraska for any such funds not repaid to the state as required by
3 law. Money raised prior to filing the affidavit shall not count
4 toward the qualifying amount established in this subsection. Money
5 raised prior to the first day of the election period shall not
6 count toward the qualifying amount established in this subsection.
7 At least sixty-five percent of the qualifying amount established in
8 this subsection shall be received from individuals. For purposes
9 of this section, a business, corporation, partnership, limited
10 liability company, or association shall be deemed a resident if it
11 has an office in this state and transacts business in this state.

12 (5) (a) ~~Except as otherwise provided in section~~
13 ~~32-1604.01, any~~ Any candidate for a covered elective office who
14 does not file an affidavit pursuant to subsection (4) of this
15 section shall file with the commission an affidavit indicating his
16 or her intent not to abide by the spending limitations of this
17 section and shall include a reasonable estimate of his or her
18 maximum expenditures as defined in sections 32-1603 and 49-1419 for
19 the primary election period. The estimate of expenditures for the
20 primary election period may be amended up to thirty days prior to
21 the primary election by filing a subsequent affidavit. A candidate
22 nominated for a covered elective office in the primary election
23 shall file an estimate of expenditures for the general election
24 period on or before the fortieth day following the primary
25 election. The estimate of expenditures for the general election
26 period may be amended up to sixty days prior to the general
27 election by filing a subsequent affidavit.

28 (b) A candidate for a covered elective office whose

1 estimated maximum expenditures exceed the spending limitations of
2 this section as set forth in the affidavit filed under subdivision
3 (5) (a) of this section shall file an affidavit with the commission
4 when forty percent of his or her estimated maximum expenditures has
5 been spent for the primary election period or when his or her
6 expenditures for the primary election period exceed the spending
7 limitation set forth in this section for the primary election
8 period, whichever occurs first. The candidate shall file a second
9 affidavit with the commission when forty percent of his or her
10 estimated maximum expenditures has been spent for the general
11 election period or when his or her expenditures for the general
12 election period exceed the spending limitation set forth in this
13 section for the general election period, whichever occurs first.
14 Each affidavit shall be filed no later than ~~five~~ two days after the
15 forty percent has been expended or the respective spending
16 limitation has been exceeded. The affidavit may be filed by hand
17 delivery, facsimile transmission, telegraph, express delivery
18 service, or any other written means of communication. If the
19 filing is made by a means which does not include the original
20 signature of the affiant, an affidavit which includes the original
21 signature shall be filed with the commission within fourteen days
22 after the forty percent has been expended or the respective
23 spending limitation has been exceeded. A candidate who
24 intentionally fails to file the required affidavit within either
25 ~~five-day~~ two-day period shall be guilty of a Class II misdemeanor.
26 (c) A candidate who fails to file an estimate of
27 expenditures as required by this section shall pay to the
28 commission a late filing fee of twenty-five dollars for each day

1 the estimate remains not filed in violation of this section not to
2 exceed seven hundred fifty dollars. A candidate who fails to file
3 an affidavit as required by subdivision (5)(b) of this section
4 shall pay to the commission a late filing fee of twenty-five
5 dollars for each day the affidavit remains not filed in violation
6 of this section not to exceed seven hundred fifty dollars.

7 (6) If an affidavit required under subdivision (5)(b) of
8 this section is not filed, no public funds shall be distributed to
9 the candidates for such office who have qualified for public funds
10 for the election period unless preelection campaign statements
11 filed pursuant to subdivisions (1)(a) and (b) of section 49-1459 or
12 audits by the commission conducted pursuant to section 49-14,122
13 reveal that a candidate has made expenditures requiring the filing
14 of an affidavit under subdivision (5)(b) of this section.

15 Sec. 4. Section 32-1604.01, Revised Statutes Supplement,
16 2002, is amended to read:

17 32-1604.01. (1) ~~Except as otherwise provided in this~~
18 ~~section, each~~ Each candidate for a covered elective office listed
19 in subdivision (1)(a) of section 32-1603 shall file either an
20 affidavit to abide under subsection (4) of section 32-1604 or an
21 affidavit not to abide under subdivision (5)(a) of section 32-1604
22 with the Nebraska Accountability and Disclosure Commission within
23 ten days after a candidate committee is required to be formed
24 pursuant to sections 49-1413, 49-1445, and 49-1449 and on or before
25 the first day of each election period thereafter unless the
26 candidate has not filed and will not file to seek election or
27 reelection or has withdrawn his or her filing to seek election or
28 reelection. ~~Except as otherwise provided in this section, each~~

1 Each candidate for a covered elective office listed in subdivision
2 (1)(b) of section 32-1603 shall file either an affidavit to abide
3 under subsection (4) of section 32-1604 or an affidavit not to
4 abide under subdivision (5)(a) of section 32-1604 with the Nebraska
5 Accountability and Disclosure Commission within ten days after a
6 candidate committee is required to be formed pursuant to sections
7 49-1413, 49-1445, and 49-1449 or within ten days after the office
8 is designated as a covered elective office under section 32-1611,
9 whichever is later, unless the candidate has not filed and will not
10 file to seek election or reelection or has withdrawn his or her
11 filing to seek election or reelection. If a candidate is not
12 required to form a candidate committee, the candidate is not
13 required to file an affidavit under section 32-1604.

14 (2) ~~Any candidate for a legislative district which is~~
15 ~~subject to election in 1998 for whom a candidate committee is in~~
16 ~~existence on September 13, 1997, shall file an affidavit to abide~~
17 ~~under subsection (4) of section 32-1604 or an affidavit not to~~
18 ~~abide under subdivision (5)(a) of section 32-1604 within thirty~~
19 ~~days after September 13, 1997.~~

20 ~~(3)~~ An affidavit to abide under subsection (4) of section
21 32-1604 and an affidavit not to abide under subdivision (5)(a) of
22 section 32-1604 shall be filed on forms prescribed by the
23 commission.

24 ~~(4)~~ (3) A candidate who fails to file an affidavit as
25 required by this section shall pay to the commission a late filing
26 fee of twenty-five dollars for each day the statement remains not
27 filed in violation of this section not to exceed seven hundred
28 fifty dollars.

1 ~~(5)~~ (4) It shall be a violation of the Campaign Finance
2 Limitation Act for a candidate for a covered elective office who
3 has filed an affidavit to abide under subsection (4) of section
4 32-1604 to exceed the spending limitations prescribed in section
5 32-1604.

6 Sec. 5. Section 32-1606, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 32-1606. (1) Any candidate for a covered elective office
9 who has satisfied the requirements of subsection (4) of section
10 32-1604 may, upon spending twenty-five percent of the spending
11 limitation for the election period prescribed in such section, file
12 an affidavit with the commission setting forth these facts and
13 requesting public funds. ~~If~~ Subject to the limitation in this
14 subsection, if the highest estimated maximum expenditure filed by
15 any of the candidate's opponents for that same office in effect as
16 of the last date to amend an affidavit pursuant to subsection (5)
17 of section 32-1604 is greater than the spending limitations as
18 provided in subsection (3) of section 32-1604 for the office, the
19 candidate shall be entitled to receive the difference between the
20 spending limitation and the highest estimated maximum expenditure
21 filed by any of the candidate's opponents. For the election
22 period, no candidate shall be entitled to receive more than three
23 times the amount of the spending limit for the election period.
24 For the primary election period, no candidate shall be entitled to
25 receive more than three times the amount of the spending limit for
26 the primary election period. The commission shall compute the
27 amount of the payment to be made to a candidate. For purposes of
28 this section, a candidate's opponent in a partisan primary election

1 shall include only those other candidates of the same political
2 party running for the same office and a candidate's opponent in a
3 nonpartisan primary election shall include all candidates running
4 for the same office.

5 (2) (a) In the primary election period, to the extent that
6 the public funds received by a candidate under this section when
7 added to the spending limitation for the primary election do not
8 equal the highest estimated maximum expenditure of the candidate's
9 opponents, the candidate may raise and spend the difference between
10 the highest estimated maximum expenditure and the total of (i) the
11 spending limitation for the primary election and (ii) the public
12 funds received by the candidate.

13 (b) In the general election period, to the extent that
14 the public funds received by a candidate under this section when
15 added to the spending limitation for the election period do not
16 equal the highest estimated maximum expenditure of the candidate's
17 opponents, the candidate may raise and spend the difference between
18 the highest estimated maximum expenditure and the total of (i) the
19 spending limitation for the election period and (ii) the public
20 funds received by the candidate.

21 (c) The expenditure of funds pursuant to this subsection
22 shall not be considered a failure to comply with the spending
23 limitations or spending in excess of the spending limitations.

24 (3) Except as otherwise provided by in subsection (6) of
25 section 32-1604, public funds to which a candidate is entitled
26 under this section shall be disbursed to that candidate ~~not later~~
27 than ~~two weeks after~~ no earlier than the last date to amend an
28 affidavit pursuant to subdivision (5) (a) of section 32-1604 and no

1 later than the day before the election.

2 ~~(3)~~ (4) Public funds received pursuant to this section
3 shall be kept in a separate account in a financial institution in
4 this state, shall be used only to make expenditures, and shall not
5 be counted against the spending limitations prescribed in section
6 32-1604. Any unexpended public funds shall be repaid to the state
7 on or before December 31 of the final year of the election period.

8 ~~(4)~~ (5) Expenditures from public funds received pursuant
9 to this section shall be reported to the commission on forms
10 prescribed by the commission and in accordance with rules and
11 regulations adopted and promulgated by the commission.

12 Sec. 6. Section 32-1608, Revised Statutes Supplement,
13 2002, is amended to read:

14 32-1608. (1) During the election period, no candidate
15 for a covered elective office shall accept contributions from
16 independent committees, businesses, including corporations, unions,
17 industry, trade, or professional associations, and political
18 parties which, when aggregated, are in excess of eight hundred
19 twenty-five thousand five hundred dollars for a candidate for
20 Governor, seventy-five thousand dollars for a candidate for State
21 Treasurer, Secretary of State, Attorney General, or Auditor of
22 Public Accounts, thirty-six thousand five hundred dollars for a
23 candidate for the Legislature, and twenty-five thousand dollars for
24 a candidate for the Public Service Commission, the Board of Regents
25 of the University of Nebraska, or the State Board of Education.

26 (2) During the election period, no candidate for a
27 covered elective office shall accept (a) contributions from any one
28 individual which, when aggregated for the given period, are in

1 excess of two thousand dollars or (b) contributions from any one
2 independent committee, business, including a corporation, union,
3 industry, trade, or professional association, or political party
4 which, when aggregated for the given period, are in excess of ten
5 thousand dollars. This subsection shall not apply to contributions
6 by the candidate of his or her own money or property on behalf of
7 his or her candidacy.

8 Sec. 7. Section 49-1463.01, Revised Statutes Supplement,
9 2002, is amended to read:

10 49-1463.01. (1) A person required to pay a late filing
11 fee imposed under section 32-1604, 32-1604.01, 49-1449, 49-1458,
12 49-1463, 49-1467, 49-1469, 49-1478.01, or 49-1479.01 may apply to
13 the commission for relief. The commission by order may reduce the
14 amount of a late filing fee imposed and waive any or all of the
15 interest due on the fee upon a showing by such person that (a) the
16 circumstances indicate no intent to file late, (b) the person has
17 not been required to pay late filing fees for two years prior to
18 the time the filing was due, (c) the late filing shows that less
19 than five thousand dollars was raised, received, or expended during
20 the reporting period, and (d) a reduction of the late fees and
21 waiver of interest would not frustrate the purposes of the Nebraska
22 Political Accountability and Disclosure Act.

23 (2) A person required to pay a late filing fee imposed
24 for failure to file a statement of exemption under subsection (2)
25 of section 49-1459 may apply to the commission for relief. The
26 commission by order may reduce or waive the late filing fee and
27 waive any or all of the interest due on the fee, and the person
28 shall not be required to make a showing as provided by subsection

1 (1) of this section.

2 Sec. 8. Section 49-14,124, Revised Statutes Supplement,
3 2002, is amended to read:

4 49-14,124. (1) Upon a complaint signed under oath by any
5 person which contains sufficient information to indicate that there
6 is at least a reasonable belief that a violation has occurred, upon
7 the recommendation of the executive director, or upon its own
8 motion, the commission shall, by way of preliminary investigation,
9 investigate any alleged violation of the Nebraska Political
10 Accountability and Disclosure Act or any rule or regulation adopted
11 and promulgated thereunder. Upon the recommendation of the
12 executive director or upon its own motion, the commission shall, by
13 way of preliminary investigation, investigate any alleged violation
14 of the Campaign Finance Limitation Act or any rule or regulation
15 promulgated thereunder. For purposes of conducting preliminary
16 investigations under either act, the commission shall have the
17 powers possessed by the courts of this state to issue subpoenas,
18 and the district court shall enforce such subpoenas.

19 (2) Each governmental body shall cooperate with the
20 commission in the conduct of its investigations. All commission
21 proceedings and records relating to preliminary investigations
22 shall be confidential until a final determination is made by the
23 commission unless the person alleged to be in violation of the
24 Nebraska Political Accountability and Disclosure Act or the
25 Campaign Finance Limitation Act requests that the proceedings be
26 public.

27 (3) The executive director shall notify any person under
28 investigation by the commission of the investigation and of the

1 nature of the alleged violation within five days after the
2 commencement of the investigation. Within fifteen days after the
3 filing of a sworn complaint by a person alleging a violation, and
4 every thirty days thereafter until the matter is terminated, the
5 executive director shall notify the complainant and the alleged
6 violator of the action taken to date by the commission together
7 with the reasons for such action or for nonaction.

8 Sec. 9. Section 49-14,125, Revised Statutes Supplement,
9 2002, is amended to read:

10 49-14,125. (1) If, after a preliminary investigation, it
11 is determined by a majority vote of the commission that there is no
12 probable cause for belief that a person has violated the Nebraska
13 Political Accountability and Disclosure Act or the Campaign Finance
14 Limitation Act or any rule or regulation adopted and promulgated
15 thereunder or if the commission determines that there is
16 insufficient evidence to reasonably believe that the person could
17 be found to have violated either act, the commission shall
18 terminate the investigation and so notify the complainant and the
19 person who had been under investigation.

20 (2) If, after a preliminary investigation, it is
21 determined by a majority vote of the commission that there is
22 probable cause for belief that the Nebraska Political
23 Accountability and Disclosure Act or the Campaign Finance
24 Limitation Act or a rule or regulation adopted and promulgated
25 thereunder has been violated and if the commission determines that
26 there is sufficient evidence to reasonably believe that the person
27 could be found to have violated either act, the commission shall
28 initiate appropriate proceedings to determine whether there has in

1 fact been a violation. All proceedings of the commission pursuant
2 to this subsection shall be by closed session attended only by
3 those persons necessary to the investigation of the alleged
4 violation, unless the person alleged to be in violation of either
5 act or any rule or regulation adopted and promulgated thereunder
6 requests an open session. The commission shall have the powers
7 possessed by the courts of this state to issue subpoenas ~~and cause~~
8 ~~them to be served and enforced~~ in connection with such proceedings,
9 and the district court shall enforce such subpoenas. All testimony
10 shall be under oath which shall be administered by a member of the
11 commission. Any person who appears before the commission shall
12 have all of the due process rights, privileges, and
13 responsibilities of a witness appearing before the courts of this
14 state. All witnesses summoned before the commission shall receive
15 reimbursement as paid in like circumstances in the district court.
16 Any person whose name is mentioned during a proceeding of the
17 commission and who may be adversely affected thereby shall be
18 notified and may appear personally before the commission on that
19 person's own behalf or file a written statement for incorporation
20 into the record of the proceeding. The commission shall cause a
21 record to be made of all proceedings pursuant to this subsection.
22 At the conclusion of proceedings concerning an alleged violation,
23 the commission shall immediately begin deliberations on the
24 evidence and then proceed to determine by majority vote of the
25 members present whether there has been a violation of the Campaign
26 Finance Limitation Act or the Nebraska Political Accountability and
27 Disclosure Act. If the commission determines that there was no
28 violation of either act or any rule or regulation, the records and

1 actions relative to the investigation and determination shall
2 remain confidential unless the alleged violator requests that the
3 records and actions be made public. If the commission determines
4 that there was a violation, the records and actions shall be made
5 public as soon as practicable after the determination is made.

6 Sec. 10. Original sections 32-1601 and 32-1606, Reissue
7 Revised Statutes of Nebraska, and sections 32-1603, 32-1604,
8 32-1604.01, 32-1608, 49-1463.01, 49-14,124, and 49-14,125, Revised
9 Statutes Supplement, 2002, are repealed.

10 Sec. 11. The following section is outright repealed:
11 Section 32-1614, Reissue Revised Statutes of Nebraska.