

LEGISLATIVE BILL 587

Approved by the Governor June 10, 1993

Introduced by Baack, 47; Bromm, 23; Coordsen, 32; Schimek, 27

AN ACT relating to campaign finance; to amend sections 49-1446, 49-1455, 49-1459, 49-1462, 49-1464, 49-1469, 49-14,122, and 49-14,129, Reissue Revised Statutes of Nebraska, 1943, sections 32-1601, 32-1603, 32-1604, 32-1606, 32-1608, and 32-1610, Revised Statutes Supplement, 1992, section 32-1607, Revised Statutes Supplement, 1992, as amended by section 3, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992, and section 77-2701, Revised Statutes Supplement, 1992, as amended by section 22, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992, and section 69, Legislative Bill 138, Ninety-third Legislature, First Session, 1993; to define a term; to provide additional spending limitations and filing requirements for affidavits as to expenditures under the Campaign Finance Limitation Act; to change provisions relating to keeping public funds in separate accounts; to require reporting of expenditures of public funds as prescribed; to change and provide penalties relating to exceeding the spending limitation under the act; to change provisions relating to prohibited political contributions; to require a candidate to keep records as prescribed; to provide for a candidate to accept a lesser amount of public funds; to provide an operative date for the Campaign Finance Limitation Act; to change provisions relating to campaign statements under the Nebraska Political Accountability and Disclosure Act; to authorize contributions from income tax refunds to the Campaign Finance Limitation Cash Fund; to harmonize provisions; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 32-1601, Revised Statutes Supplement, 1992, be amended to read as follows:

32-1601. Sections 32-1601 to 32-1610 and sections 7 to 9 and 11 of this act shall be known and may be cited as the Campaign Finance Limitation Act.

Sec. 2. That section 32-1603, Revised Statutes Supplement, 1992, be amended to read as follows:

32-1603. For purposes of the Campaign Finance Limitation Act, the definitions found in sections 49-1404 to 49-1444 shall

be used, except that:

(1) Election period shall mean the calendar year of the election; and

(2) Expenditure shall mean the purchase for campaign activities of (a) services from a communications medium, including production costs, (b) printing, photography, graphic arts, or advertising services, (c) office supplies, (d) postage and other commercial delivery services, (e) meals, lodging, and travel expenses, and (f) staff salaries; and

(3) Primary election period shall mean January 1 of the election period through the thirty-fifth day following the primary election.

Sec. 3. That section 32-1604, Revised Statutes Supplement, 1992, be amended to read as follows:

32-1604. (1) Any candidate for Governor, Lieutenant Governor, State Treasurer, Secretary of State, Attorney General, Auditor of Public Accounts, the Legislature, the Public Service Commission, the Board of Regents of the University of Nebraska, or the State Board of Education may qualify for public funds to be used for the election period if he or she limits his or her campaign spending for the election period and meets the other requirements prescribed in this section.

(2) To qualify for public funds for the election period, a candidate for Governor shall limit his or her spending for the election period to one million five hundred thousand dollars, a candidate for Lieutenant Governor, State Treasurer, Secretary of State, Attorney General, or Auditor of Public Accounts shall limit his or her spending for the election period to one hundred fifty thousand dollars, and a candidate for the Legislature, the Public Service Commission, the Board of Regents of the University of Nebraska, or the State Board of Education shall limit his or her spending for the election period to fifty thousand dollars, and such candidates shall limit their spending for the primary election period to not exceed fifty percent of the limits provided in this subsection for the election period.

(3) Each candidate desiring to receive public funds pursuant to this section shall (a) beginning January 1 of the election period, raise an amount equal to at least twenty-five percent of the spending limitation for the office from persons who are residents of Nebraska, (b) file with the Nebraska Accountability and Disclosure Commission, on the day he or she files for the office, a written declaration of intent to abide by the spending limitations prior to raising such funds, and (c) file with the commission, on the day he or she files for the office, a written statement by which he or she agrees to personally act as a guarantor for the lawful use of such funds and agrees to be held personally liable to the State of Nebraska for any such funds not repaid to the state as required by law. Money raised prior to filing the declaration required by subdivision (b) of this subsection shall not count toward the qualifying amount established in subdivision (a) of this subsection. At least sixty-five percent of the qualifying amount established in subdivision (a) of this subsection shall be received from individuals. For purposes of this section, a business, corporation, partnership, or association shall be

deemed a resident if it has an office in this state and transacts business in this state.

(4) Any candidate who does not file the written declaration pursuant to subdivision (3)(b) of this section shall file with the commission, on the day he or she files for the office, an affidavit which shall constitute his or her written declaration of intent not to abide by the spending limitations of this section and shall include a reasonable estimate of his or her maximum expenditures as defined in sections 32-1603 and 49-1419 for the primary election period. The estimate of expenditures for the primary election period may be amended up to thirty days prior to the primary election by filing a subsequent affidavit. A candidate nominated in the primary election shall file an estimate of expenditures for the remainder of the total election period on or before the fortieth day following the primary election. The estimate of expenditures for the remainder of the election period may be amended up to sixty days prior to the general election by filing a subsequent affidavit.

Sec. 4. That section 32-1606, Revised Statutes Supplement, 1992, be amended to read as follows:

32-1606. (1) Any candidate who has satisfied the requirements of subsection (3) of section 32-1604 may, upon spending twenty-five percent of the spending limitation for the election period prescribed in such section, file an affidavit with the commission setting forth these facts and requesting public funds. If the highest estimated maximum expenditure filed by any of the candidate's opponents for that same office in effect as of the last date to amend an affidavit pursuant to subsection (4) of section 32-1604 is greater than the spending limitation limitations as provided in subsection (2) of section 32-1604 for the office, the candidate shall be entitled to receive the difference between the spending limitation and the highest estimated maximum expenditure filed by any of the candidate's opponents. The commission shall compute the amount of the payment to be made to a candidate.

(2) Public funds to which a candidate is entitled under this section shall be disbursed to that candidate two weeks after the last date to amend an affidavit pursuant to subsection (4) of section 32-1604.

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

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

Sec. 5. That section 32-1607, Revised Statutes Supplement, 1992, as amended by section 3, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992, be amended to read as follows:

32-1607. (1) Any candidate who receives public funds

pursuant to section 32-1606 and fails to comply with the spending limitation limitations prescribed in section 32-1604 shall repay the amount expended in excess of the spending limitation limitations to the state within six months after the receipt of the public funds by the candidate.

(2) Any candidate who receives public funds pursuant to section 32-1606 and exceeds the spending limitations prescribed in section 32-1604 by five percent or more shall, within six months, repay the entire amount of public funds received with interest at the rate specified in section 5, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992, as such rate may from time to time be adjusted, from the date the limitation was exceeded by five percent or more.

(3) Any candidate described in subsection (1) of this section or the treasurer of any such candidate committee who exceeds the spending limitation by five percent or more shall be deemed to be in willful and knowing violation of section 32-1604. Any person willfully and knowingly violating such section shall be guilty of a Class II misdemeanor.

(4) Any candidate who files, or causes to be filed, pursuant to section 32-1604, an affidavit executed by him or her that he or she knows contains any material element which is false shall be guilty of a Class IV felony, and shall within six months after the violation repay the entire amount of public funds received with interest at the rate specified in section 5 of this act, as such rate may from time to time be adjusted, from the date of the violation.

(3) Any candidate who swears to the truth of an affidavit filed pursuant to section 32-1604 when the candidate knows or should have known that the affidavit contains any material element which is false shall be guilty of a Class IV felony.

(4) (5) Any candidate who willfully, knowingly, or intentionally underestimates his or her maximum expenditures by five percent or more in an affidavit filed pursuant to section 32-1604 shall be guilty of a Class II misdemeanor.

(5) (6) Any other violation of the Campaign Finance Limitation Act, not otherwise covered by subsections (1) through (4) (5) of this section, shall be a Class IV misdemeanor.

(6) (7) The expenditure of public funds received pursuant to section 32-1606 shall not be a violation of the spending limitation.

Sec. 6. That section 32-1608, Revised Statutes Supplement, 1992, be amended to read as follows:

32-1608. During the election period, no candidate shall accept contributions from independent committees, businesses, including corporations, unions, industry, trade, and or professional associations, and political parties which, when aggregated, are in excess of seven hundred fifty thousand dollars for a candidate for Governor, seventy-five thousand dollars for a candidate for Lieutenant Governor, State Treasurer, Secretary of State, Attorney General, or Auditor of Public Accounts, and twenty-five thousand dollars for a candidate for the

Legislature, the Public Service Commission, the Board of Regents of the University of Nebraska, or the State Board of Education.

Sec. 7. The commission shall adopt and promulgate rules and regulations to provide for the reporting of expenditures by candidates of any public funds received pursuant to the Campaign Finance Limitation Act and for the keeping of records with respect to the expenditure of such funds.

Sec. 8. Any candidate desiring to receive public funds shall keep detailed accounts, records, bills, and receipts necessary to substantiate the information contained in any affidavit or statement requesting public funds and all expenditures of public funds distributed pursuant to the Campaign Finance Limitation Act.

Sec. 9. Any candidate who has qualified to receive public funds pursuant to the Campaign Finance Limitation Act may, by written request, limit his or her receipt of public funds to an amount which is less than the total amount he or she is entitled to receive.

Sec. 10. That section 32-1610, Revised Statutes Supplement, 1992, be amended to read as follows:

32-1610. The Campaign Finance Limitation Cash Fund is hereby created. The fund shall be used by the commission to provide public financing of campaigns pursuant to the Campaign Finance Limitation Act, except that transfers may be made to the General Fund at the direction of the Legislature. The fund shall consist of money appropriated to it by the Legislature, and amounts repaid by candidates pursuant to sections 32-1606 and 32-1607, and taxpayer contributions to the fund pursuant to section 21 of this act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276.

Sec. 11. The Campaign Finance Limitation Act shall become operative for elections held after January 1, 1995.

Sec. 12. That section 49-1446, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

49-1446. (1) Each committee shall have a treasurer who is a qualified elector of this state. A candidate may appoint himself or herself as the candidate committee treasurer.

(2) Each Except for funds received as provided in the Campaign Finance Limitation Act, each committee shall designate one account in a financial institution in this state as an official depository for the purpose of depositing all contributions which it receives in the form of or which are converted to money, checks, or other negotiable instruments and for the purpose of making all expenditures. Secondary depositories shall be used for the sole purpose of depositing contributions and promptly transferring the deposits to the committee's official depository.

(3) No contribution shall be accepted and no expenditure shall be made by a committee which has not filed a statement of organization and which does not have a treasurer. When the office of treasurer in a candidate committee is vacant, the candidate shall be the treasurer until the candidate appoints a new treasurer.

(4) No expenditure shall be made by a committee without the authorization of the treasurer or the ~~treasurer's designee~~ assistant treasurer. The contributions received or expenditures made by a candidate or an agent of a candidate shall be considered received or made by the candidate committee.

(5) Contributions received by an individual acting in behalf of a committee shall be reported promptly to the committee's treasurer not later than five days before the closing date of any campaign statement required to be filed by the committee; and shall be reported to the committee treasurer immediately if the contribution is received less than five days before the closing date.

(6) A contribution shall be considered received by a committee when it is received by the committee treasurer or a designated agent of the committee treasurer notwithstanding the fact that the contribution is not deposited in the official depository by the reporting deadline.

(7) Contributions received by a committee shall not be commingled with any funds of an agent of the committee or of any other person except for funds received or disbursed by a separate segregated political fund for the purpose of supporting or opposing candidates and committees in elections in states other than Nebraska and candidates for federal office, as provided in section 49-1469, including independent expenditures made in such elections.

(8) Any person who violates section 49-1445 or this section shall be guilty of a Class IV misdemeanor.

Sec. 13. That section 49-1455, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

49-1455. The campaign statement of a committee, other than a political party committee, shall contain the following information:

(1) The filing committee's name, address, and telephone number and the full name, residential and business addresses, and telephone numbers of its committee treasurer;

(2) Under the heading RECEIPTS, the total amount of contributions received during the period covered by the campaign statement; under the heading EXPENDITURES, the total amount of expenditures made during the period covered by the campaign statement; and the cumulative amount of those totals for ~~that election~~ the election period. If a loan was repaid during the period covered by the campaign statement, the amount of the repayment shall be subtracted from the total amount of contributions received. Forgiveness of a loan shall not be included in the totals. Payment of a loan by a third party shall be recorded and reported as a contribution by the third party but shall not be included in the totals. In-kind contributions or expenditures shall be listed at fair market value and shall be reported as both contributions and expenditures;

(3) The balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the campaign statement;

(4) The full name of each person individual from whom contributions totaling more than one hundred dollars are received during the period covered by the report, together with the person's individual's street address, the amount contributed, the date on which each contribution was received, and the cumulative amount contributed by that person for that election individual for the election period;

(5) The cumulative amount contributed and the name and address of each person, except those persons or names full name of each person, except those individuals reported under subdivision (4) of this section, who which contributed a total of more than one hundred dollars for that election during the period covered by the report together with the person's street address, the amount contributed, the date on which each contribution was received, and the cumulative amount contributed by the person for the election period;

(6) The name and street address of each committee and the full name and street address of the treasurer of each committee which is listed as a contributor shall include the full name of the committee's treasurer;

(7) The full name and street address of each person to whom expenditures totaling more than one hundred dollars were made, together with the date and amount of each separate expenditure to each such person during the period covered by the campaign statement; the purpose of the expenditure; and the full name and street address of the person providing the consideration for which any expenditure was made if different from the payee;

(8) The amount and the date of expenditures for or against a candidate or ballot question during the period covered by the campaign statement and the cumulative amount of expenditures for or against that candidate or ballot question for the election period. An expenditure made in support of more than one candidate or ballot question, or both, shall be apportioned reasonably among the candidates or ballot questions, or both; and

(9) The total amount of funds disbursed by a separate segregated political fund, by state, for the purpose of supporting or opposing candidates and committees in elections in states other than Nebraska and candidates for federal office, including independent expenditures made in such elections.

For purposes of this section, election period shall be as defined in section 32-1603.

Sec. 14. That section 49-1459, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

49-1459. Campaign statements as required by sections 49-1401 to 49-14-138 the Nebraska Political Accountability and Disclosure Act shall be filed according to the following schedule:

(1) A first preelection campaign statement shall be filed not later than the thirtieth day before the election. The closing date for a campaign statement filed under this subdivision shall be the thirty-fifth day before the election;

(2) A second preelection campaign statement shall be filed not later than the tenth day before the election. The closing date for a campaign statement filed under this subdivision shall be the fifteenth day before the election; and

(3) A postelection campaign statement shall be filed not later than the fortieth day following the primary election and the sixtieth day following the general election. The closing date for a postprimary election campaign statement filed under this subdivision shall be the thirty-fifth day following the election. The closing date for a postgeneral election campaign statement filed under this subdivision shall be December 31 of the year in which the election is held. If all liabilities of a candidate and committee are paid before the closing date and additional contributions are not expected, the campaign statement may be filed at any time after the election, but not later than the fortieth day following the election dates provided under this subdivision.

Sec. 15. That section 49-1462, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

49-1462. Unless otherwise required to file ~~a~~ an election campaign statement as required by sections section 49-1459, ~~to~~ 49-1463 ~~during a calendar year or unless the committee does not receive or expend more than two thousand dollars during such calendar year,~~ a committee shall file a campaign statement with a closing date of December 31 of such year not later than January 31 of the following year. The period covered by the campaign statement filed pursuant to this section shall begin from the day after the closing date of the previous campaign statement filed.

Sec. 16. That section 49-1464, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

49-1464. (1) The campaign statement of ~~a~~ a candidate ~~committees~~ committee shall be filed with the commission and a copy with the election commissioner or, if there is no election commissioner, the clerk of the county of residence of the candidate.

(2)(a) The campaign statement of a ballot question committee supporting or opposing (a) a statewide ballot question; or (b) a ballot question to be voted upon in more than one county, but not statewide, shall be filed with the commission, ~~and one copy with the election commissioner or, if there is no election commissioner, the clerk of the most populous county in the election district in which the ballot question is to be voted upon.~~ A ballot question committee supporting or opposing a ballot question to be voted upon within a single county shall file a statement with the commission and with the election commissioner or, if there is no election commissioner, the clerk of that county.

(3) The campaign statement of a political party committee that is a state central, district, or county committee shall be filed with the commission. A copy of the campaign statement of a district political party committee shall be filed with the election commissioner or, if there is no election commissioner, the clerk of the most populous county in the district. A copy of the campaign ~~report~~ statement of a county

committee shall be filed with the election commissioner or, if there is no election commissioner, the clerk of that county.

(4) The campaign statement of any other committee not covered under this section shall be filed with the commission. ~~A copy of the campaign statement shall be filed with the election commissioner or, if there is no election commissioner, the clerk of the county of residence of a majority of the candidates for whom it made expenditures.~~

Sec. 17. That section 49-1469, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

49-1469. (1) Any corporation, labor organization, or industry, trade, or professional association, whether organized under the laws of this state or any other state or country and doing business in this state, without being a committee as defined in section 49-1413, may make expenditures or provide personal services. It shall not be required to file reports of independent expenditures pursuant to section 49-1467, but it shall file a report with the commission within ten days after the end of the calendar month in which any expenditure is made or personal service provided. Such report shall fully disclose the nature, date, and value of any expenditure, as well as the committee or candidate to which or in whose behalf it was made. In the case of personal services, the corporation, labor organization, or industry, trade, or professional association shall in such report fully detail the nature, the date or dates, and the specifics of the personal service provided, the committee or candidate to which or in whose behalf it was made, and the proposition in behalf of or in opposition to which it was made.

(2)(a) A corporation, labor organization, or industry, trade, or professional association may not receive contributions unless it establishes and administers a separate segregated political fund which shall be utilized only in the manner set forth in this subsection.

(b) The corporation, labor organization, or industry, trade, or professional association establishing and administering such a separate segregated political fund shall not make an expenditure to such fund, except that it may make expenditures and provide personal services for the establishment and administration of such separate segregated political fund.

(c) All contributions to and expenditures from such separate segregated political fund shall be limited to money or anything of ascertainable value obtained through the voluntary contributions of the employees, officers, directors, stockholders, or members of the corporation, including a nonprofit corporation, labor organization, or industry, trade, or professional association, and the affiliates thereof, under which such fund was established. No contribution or expenditure shall be received or made from such fund if obtained or made by using or threatening to use job discrimination or financial reprisals. Only expenditures to candidates and committees and independent expenditures may be made from a fund established by a corporation, labor organization, or industry, trade, or professional organization, except that such separate segregated political fund may receive and disburse funds for

the purpose of supporting or opposing candidates and committees in elections in states other than Nebraska and candidates for federal office and making independent expenditures in such elections if such receipts and disbursements are made in conformity with the solicitation provisions of this section and the corporation, labor organization, or industry, trade, or professional association which establishes and administers such fund complies with the laws of the jurisdiction in which such receipts or disbursements are made. The expenses for establishment and administration of a separate segregated political fund of ~~an a~~ ~~corporation, labor organization, or~~ industry, trade, or professional association may be paid from the separate segregated political fund of such ~~corporation, labor organization, or~~ industry, trade, or professional association.

(d) The corporation, labor organization, or industry, trade, or professional association which establishes and administers a separate segregated political fund shall file the reports required by subsection (1) of this section with respect to the expenditures made or personal services provided for the establishment and administration of such fund but need not file such reports for the expenditures made from such fund. If a corporation makes an expenditure to a separate segregated political fund which is established and administered by an industry, trade, or professional association of which such corporation is a member, such corporation shall not be required to file the reports required by subsection (1) of this section.

(e) Such a separate segregated political fund is hereby declared to be an independent committee and subject to all of the provisions of the Nebraska Political Accountability and Disclosure Act applicable to independent committees, and the corporation, labor organization, or industry, trade, or professional association which establishes and administers such fund shall make the reports and filings required therefor.

(3) Any person who knowingly violates the provisions of this section shall be guilty of a Class III misdemeanor.

Sec. 18. That section 49-14,122, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

49-14,122. The commission shall make random field investigations and audits with respect to campaign statements and activity reports filed with the commission under sections 49-1401 to 49-14,138. ~~Any the Campaign Finance Limitation Act and the Nebraska Political Accountability and Disclosure Act. Except for audits conducted pursuant to the Campaign Finance Limitation Act, any audit or investigation conducted of a candidate's campaign statements during a campaign shall include an audit or investigation of the statements of his or her opponent or opponents as well.~~ The commission may also carry out field investigations or audits with respect to any campaign statement, registration, report, or other statement filed under sections 49-1401 to 49-14,138 ~~the Nebraska Political Accountability and Disclosure Act~~ if the commission or the executive director deems such investigations or audits

necessary to carry out the purposes of ~~sections 49-1401 to 49-14,138~~ the act.

Sec. 19. That section 49-14,129, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

49-14,129. The commission, by order, may suspend or modify any of the reporting requirements of ~~sections 49-1445 to 49-14,104~~ the Campaign Finance Limitation Act or the Nebraska Political Accountability and Disclosure Act, in a particular case, for good cause shown, or if it finds that literal application of ~~sections 49-1401 to 49-14,138~~ works such acts works a manifestly unreasonable hardship and if it also finds that such suspension or modification will not frustrate the purposes of ~~sections 49-1401 to 49-14,138~~ such acts. Any such suspension or modification shall be only to the extent necessary to substantially relieve the hardship. The commission shall ~~act to~~ suspend or modify any reporting requirements only if it determines that facts exist that are clear and convincing proof of the findings required by this section.

Sec. 20. That section 77-2701, Revised Statutes Supplement, 1992, as amended by section 22, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992, and section 69, Legislative Bill 138, Ninety-third Legislature, First Session, 1993, be amended to read as follows:

77-2701. Sections 77-2701 to 77-27,135 and sections 24, 25, and 34 of this act and section 70 of this act and section 21 of this act shall be known and may be cited as the Nebraska Revenue Act of 1967.

Sec. 21. Beginning with the tax form filed for the 1994 tax year, the Tax Commissioner shall include on the individual income tax form space in which the individual taxpayer may, if a refund is due, designate two dollars of such refund as a contribution to the Campaign Finance Limitation Cash Fund created in section 32-1610.

Sec. 22. That original sections 49-1446, 49-1455, 49-1459, 49-1462, 49-1464, 49-1469, 49-14,122, and 49-14,129, Reissue Revised Statutes of Nebraska, 1943, sections 32-1601, 32-1603, 32-1604, 32-1606, 32-1608, and 32-1610, Revised Statutes Supplement, 1992, section 32-1607, Revised Statutes Supplement, 1992, as amended by section 3, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992, and section 77-2701, Revised Statutes Supplement, 1992, as amended by section 22, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992, and section 69, Legislative Bill 138, Ninety-third Legislature, First Session, 1993, are repealed.

Sec. 23. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.