

PERSONAL USE OF CAMPAIGN FUNDS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Karen Hale

LONG TITLE

General Description:

This bill modifies the Election Code by enacting provisions governing the personal use and disposition of campaign funds.

Highlighted Provisions:

This bill:

- ▶ establishes requirements for the disposition or transfer of monies remaining in campaign accounts;
- ▶ prohibits owners of campaign accounts from expending campaign monies for personal use; and
- ▶ provides a civil penalty for a violation of the requirements.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

20A-11-101, as last amended by Chapter 90, Laws of Utah 2004

20A-11-201, as last amended by Chapter 355, Laws of Utah 1997

20A-11-301, as last amended by Chapter 355, Laws of Utah 1997

20A-11-402, as last amended by Chapter 355, Laws of Utah 1997

20A-11-1301, as enacted by Chapter 355, Laws of Utah 1997



Be it enacted by the Legislature of the state of Utah:

Section 1. Section **20A-11-101** is amended to read:

20A-11-101. Definitions.

As used in this chapter:

(1) "Address" means the number and street where an individual resides or where a reporting entity has its principal office.

(2) "Ballot proposition" includes initiatives, referenda, proposed constitutional amendments, and any other ballot propositions submitted to the voters that are authorized by the Utah Code Annotated 1953.

(3) "Candidate" means any person who:

(a) files a declaration of candidacy for a public office; or

(b) receives contributions, makes expenditures, or gives consent for any other person to receive contributions or make expenditures to bring about the person's nomination or election to a public office.

(4) "Chief election officer" means:

(a) the lieutenant governor for state office candidates, legislative office candidates, officeholders, political parties, political action committees, corporations, political issues committees, and state school board candidates; and

(b) the county clerk for local school board candidates.

(5) "Continuing political party" means an organization of voters that participated in the last regular general election and polled a total vote equal to 2% or more of the total votes cast for all candidates for the United States House of Representatives.

(6) (a) "Contribution" means any of the following when done for political purposes:

(i) a gift, subscription, donation, loan, advance, or deposit of money or anything of value given to the filing entity;

(ii) an express, legally enforceable contract, promise, or agreement to make a gift, subscription, donation, unpaid or partially unpaid loan, advance, or deposit of money or anything of value to the filing entity;

(iii) any transfer of funds from another reporting entity or a corporation to the filing entity;

(iv) compensation paid by any person or reporting entity other than the filing entity for personal services provided without charge to the filing entity;

(v) remuneration from any organization or its directly affiliated organization that has a registered lobbyist to compensate a legislator for a loss of salary or income while the Legislature is in session;

(vi) salaries or other remuneration paid to a legislator by any agency or subdivision of the state, including school districts, for the period the Legislature is in session; and

(vii) goods or services provided to or for the benefit of the filing entity at less than fair market value.

(b) "Contribution" does not include:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of the filing entity; or

(ii) money lent to the filing entity by a financial institution in the ordinary course of business.

(7) (a) "Corporation" means a domestic or foreign, profit or nonprofit, business organization that is registered as a corporation or is authorized to do business in a state and makes any expenditure from corporate funds for:

(i) political purposes; or

(ii) the purpose of influencing the approval or the defeat of any ballot proposition.

(b) "Corporation" does not mean:

(i) a business organization's political action committee or political issues committee; or

(ii) a business entity organized as a partnership or a sole proprietorship.

(8) "Detailed listing" means:

(a) for each contribution or public service assistance:

(i) the name and address of the individual or source making the contribution or public service assistance;

(ii) the amount or value of the contribution or public service assistance; and

(iii) the date the contribution or public service assistance was made; and

(b) for each expenditure:

(i) the amount of the expenditure;

(ii) the person or entity to whom it was disbursed;

(iii) the specific purpose, item, or service acquired by the expenditure; and

(iv) the date the expenditure was made.

(9) "Election" means each:

(a) regular general election;

(b) regular primary election; and

(c) special election at which candidates are eliminated and selected.

(10) (a) "Expenditure" means:

(i) any disbursement from contributions, receipts, or from the separate bank account required by this chapter;

(ii) a purchase, payment, donation, distribution, loan, advance, deposit, gift of money, or anything of value made for political purposes;

(iii) an express, legally enforceable contract, promise, or agreement to make any purchase, payment, donation, distribution, loan, advance, deposit, gift of money, or anything of value for political purposes;

(iv) compensation paid by a corporation or filing entity for personal services rendered by a person without charge to a reporting entity;

(v) a transfer of funds between the filing entity and a candidate's personal campaign committee; or

(vi) goods or services provided by the filing entity to or for the benefit of another reporting entity for political purposes at less than fair market value.

(b) "Expenditure" does not include:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a reporting entity;

(ii) money lent to a reporting entity by a financial institution in the ordinary course of business; or

(iii) anything listed in Subsection (10)(a) that is given by a corporation or reporting entity to candidates for office or officeholders in states other than Utah.

(11) "Filing entity" means the reporting entity that is filing a report required by this chapter.

(12) "Financial statement" includes any summary report, interim report, or other statement disclosing contributions, expenditures, receipts, donations, or disbursements that is

required by this chapter.

(13) "Governing board" means the individual or group of individuals that determine the candidates and committees that will receive expenditures from a political action committee.

(14) "Incorporation" means the process established by Title 10, Chapter 2, Part 1, Incorporation, by which a geographical area becomes legally recognized as a city or town.

(15) "Incorporation election" means the election authorized by Section 10-2-111.

(16) "Incorporation petition" means a petition authorized by Section 10-2-109.

(17) "Individual" means a natural person.

(18) "Interim report" means a report identifying the contributions received and expenditures made since the last report.

(19) "Legislative office" means the office of state senator, state representative, speaker of the House of Representatives, president of the Senate, and the leader, whip, and assistant whip of any party caucus in either house of the Legislature.

(20) "Legislative office candidate" means a person who:

(a) files a declaration of candidacy for the office of state senator or state representative;

(b) declares himself to be a candidate for, or actively campaigns for, the position of speaker of the House of Representatives, president of the Senate, or the leader, whip, and assistant whip of any party caucus in either house of the Legislature; and

(c) receives contributions, makes expenditures, or gives consent for any other person to receive contributions or make expenditures to bring about the person's nomination or election to a legislative office.

(21) "Newly registered political party" means an organization of voters that has complied with the petition and organizing procedures of this chapter to become a registered political party.

(22) "Officeholder" means a person who holds a public office.

(23) "Party committee" means any committee organized by or authorized by the governing board of a registered political party.

(24) "Person" means both natural and legal persons, including individuals, business organizations, personal campaign committees, party committees, political action committees, political issues committees, labor unions, and labor organizations.

(25) "Personal campaign committee" means the committee appointed by a candidate to

act for the candidate as provided in this chapter.

(26) (a) "Personal use" means an expenditure that provides a benefit of any kind to a candidate, legislative office candidate, or officeholder that is not reasonably related to political purposes or to fulfilling the duties of the office to which the candidate, legislative office candidate, or officeholder was elected.

(b) "Personal use" does not mean an expenditure for political purposes.

~~[(26)]~~ (27) (a) "Political action committee" means an entity, or any group of individuals or entities within or outside this state, that solicits or receives contributions from any other person, group, or entity or makes expenditures for political purposes. A group or entity may not divide or separate into units, sections, or smaller groups for the purpose of avoiding the financial reporting requirements of this chapter, and substance shall prevail over form in determining the scope or size of a political action committee.

(b) "Political action committee" includes groups affiliated with a registered political party but not authorized or organized by the governing board of the registered political party that receive contributions or makes expenditures for political purposes.

(c) "Political action committee" does not mean:

(i) a party committee;

(ii) any entity that provides goods or services to a candidate or committee in the regular course of its business at the same price that would be provided to the general public;

(iii) an individual;

(iv) individuals who are related and who make contributions from a joint checking account;

(v) a corporation; or

(vi) a personal campaign committee.

~~[(27)]~~ (28) "Political convention" means a county or state political convention held by a registered political party to select candidates.

~~[(28)]~~ (29) (a) "Political issues committee" means an entity, or any group of individuals or entities within or outside this state, that solicits or receives donations from any other person, group, or entity or makes disbursements to influence, or to intend to influence, directly or indirectly, any person to:

(i) assist in placing a statewide ballot proposition on the ballot, assist in keeping a

statewide ballot proposition off the ballot, or refrain from voting or vote for or vote against any statewide ballot proposition; or

(ii) sign or refuse to sign an incorporation petition or refrain from voting, vote for, or vote against any proposed incorporation in an incorporation election.

(b) "Political issues committee" does not mean:

(i) a registered political party or a party committee;

(ii) any entity that provides goods or services to an individual or committee in the regular course of its business at the same price that would be provided to the general public;

(iii) an individual;

(iv) individuals who are related and who make contributions from a joint checking account; or

(v) a corporation, except a corporation whose apparent purpose is to act as a political issues committee.

~~[(29)]~~ (30) (a) "Political issues contribution" means any of the following:

(i) a gift, subscription, unpaid or partially unpaid loan, advance, or deposit of money or anything of value given to a political issues committee;

(ii) an express, legally enforceable contract, promise, or agreement to make a political issues donation to influence the approval or defeat of any ballot proposition;

(iii) any transfer of funds received by a political issues committee from a reporting entity;

(iv) compensation paid by another reporting entity for personal services rendered without charge to a political issues committee; and

(v) goods or services provided to or for the benefit of a political issues committee at less than fair market value.

(b) "Political issues contribution" does not include:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a political issues committee; or

(ii) money lent to a political issues committee by a financial institution in the ordinary course of business.

~~[(30)]~~ (31) (a) "Political issues expenditure" means any of the following:

(i) any payment from political issues contributions made for the purpose of influencing

the approval or the defeat of a statewide ballot proposition;

(ii) a purchase, payment, distribution, loan, advance, deposit, or gift of money made for the purpose of influencing the approval or the defeat of a statewide ballot proposition;

(iii) an express, legally enforceable contract, promise, or agreement to make any political issues expenditure;

(iv) compensation paid by a reporting entity for personal services rendered by a person without charge to a political issues committee; or

(v) goods or services provided to or for the benefit of another reporting entity at less than fair market value.

(b) "Political issues expenditure" does not include:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a political issues committee; or

(ii) money lent to a political issues committee by a financial institution in the ordinary course of business.

~~[(31)]~~ (32) "Political purposes" means an act done with the intent or in a way to influence or tend to influence, directly or indirectly, any person to refrain from voting or to vote for or against any candidate for public office at any caucus, political convention, primary, or election.

~~[(32)]~~ (33) "Primary election" means any regular primary election held under the election laws.

~~[(33)]~~ (34) "Public office" means the office of governor, lieutenant governor, state auditor, state treasurer, attorney general, state or local school board member, state senator, state representative, speaker of the House of Representatives, president of the Senate, and the leader, whip, and assistant whip of any party caucus in either house of the Legislature.

~~[(34)]~~ (35) (a) "Public service assistance" means the following when given or provided to an officeholder to defray the costs of functioning in a public office or aid the officeholder to communicate with the officeholder's constituents:

(i) a gift, subscription, donation, unpaid or partially unpaid loan, advance, or deposit of money or anything of value to an officeholder; or

(ii) goods or services provided at less than fair market value to or for the benefit of the officeholder.

(b) "Public service assistance" does not include:

(i) anything provided by the state;

(ii) services provided without compensation by individuals volunteering a portion or all of their time on behalf of an officeholder;

(iii) money lent to an officeholder by a financial institution in the ordinary course of business;

(iv) news coverage or any publication by the news media; or

(v) any article, story, or other coverage as part of any regular publication of any organization unless substantially all the publication is devoted to information about the officeholder.

~~[(35)]~~ (36) "Publicly identified class of individuals" means a group of 50 or more individuals sharing a common occupation, interest, or association that contribute to a political action committee or political issues committee and whose names can be obtained by contacting the political action committee or political issues committee upon whose financial report they are listed.

~~[(36)]~~ (37) "Receipts" means contributions and public service assistance.

~~[(37)]~~ (38) "Registered lobbyist" means a person registered under Title 36, Chapter 11, Lobbyist Disclosure and Regulation Act.

~~[(38)]~~ (39) "Registered political action committee" means any political action committee that is required by this chapter to file a statement of organization with the lieutenant governor's office.

~~[(39)]~~ (40) "Registered political issues committee" means any political issues committee that is required by this chapter to file a statement of organization with the lieutenant governor's office.

~~[(40)]~~ (41) "Registered political party" means an organization of voters that:

(a) participated in the last regular general election and polled a total vote equal to 2% or more of the total votes cast for all candidates for the United States House of Representatives for any of its candidates for any office; or

(b) has complied with the petition and organizing procedures of this chapter.

~~[(41)]~~ (42) "Report" means a verified financial statement.

~~[(42)]~~ (43) "Reporting entity" means a candidate, a candidate's personal campaign

committee, an officeholder, and a party committee, a political action committee, and a political issues committee.

~~[(43)]~~ (44) "School board office" means the office of state school board or local school board.

~~[(44)]~~ (45) (a) "Source" means the person or entity that is the legal owner of the tangible or intangible asset that comprises the contribution.

(b) "Source" means, for political action committees and corporations, the political action committee and the corporation as entities, not the contributors to the political action committee or the owners or shareholders of the corporation.

~~[(45)]~~ (46) "State office" means the offices of governor, lieutenant governor, attorney general, state auditor, and state treasurer.

~~[(46)]~~ (47) "State office candidate" means a person who:

(a) files a declaration of candidacy for a state office; or

(b) receives contributions, makes expenditures, or gives consent for any other person to receive contributions or make expenditures to bring about the person's nomination or election to a state office.

~~[(47)]~~ (48) "Summary report" means the year end report containing the summary of a reporting entity's contributions and expenditures.

~~[(48)]~~ (49) "Supervisory board" means the individual or group of individuals that allocate expenditures from a political issues committee.

Section 2. Section **20A-11-201** is amended to read:

20A-11-201. State office candidate -- Separate bank account for campaign funds.

(1) (a) Each state office candidate or the candidate's personal campaign committee shall deposit each contribution and public service assistance received in one or more separate campaign accounts in a financial institution.

(b) (i) The state office candidate or the candidate's personal campaign committee may use the monies in those accounts only for political purposes.

(ii) The state office candidate or the candidate's personal committee may not use the monies in those accounts for personal use.

(2) A state office candidate or the candidate's personal campaign committee may not deposit or mingle any contributions received into a personal or business account.

(3) If a person ~~[who]~~ withdraws or is eliminated in a convention, primary, or regular general election, or is no longer a state office candidate ~~[chooses not to expend the monies remaining in his campaign account]~~, the person shall dispose of monies remaining in the person's campaign account by:

(a) donating the monies to a registered political party or political action committee;

(b) donating the monies to the state General Fund;

(c) expending the monies for political purposes;

(d) donating the monies to a tax-exempt, nonprofit entity;

(e) repaying documented loans to the state office candidate's campaign;

(f) donating the monies to another candidate's campaign account;

(g) transferring the monies to an escrow account for the person to use as a candidate for public office; or

(h) some combination of Subsections (3)(a) through (g).

(4) (a) The person shall continue to file the year-end summary report required by Section 20A-11-203 until the statement of dissolution and final summary report required by Section 20A-11-205 are filed with the lieutenant governor.

(b) Any person who fails to file the report required by this Subsection (4) is subject to an administrative penalty of up to \$1,000 for each violation.

Section 3. Section **20A-11-301** is amended to read:

20A-11-301. Legislative office candidate -- Campaign requirements.

(1) Each legislative office candidate shall deposit each contribution and public service assistance received in one or more separate accounts in a financial institution that are dedicated only to that purpose.

(2) A legislative office candidate may not deposit or mingle any contributions or public service assistance received into a personal or business account.

(3) (a) A legislative office candidate may not make any political expenditures prohibited by law.

(b) A legislative office candidate may not use monies in the accounts required by this section for personal use.

(4) If a person ~~[who]~~ withdraws or is eliminated in a convention, primary, or regular general election, or is no longer a legislative candidate ~~[chooses not to expend the monies~~

remaining in his campaign account], the person shall dispose of monies remaining in the person's campaign account by:

(a) donating the monies to a registered political party or political action committee;

(b) donating the monies to the state General Fund;

(c) expending the monies for political purposes;

(d) donating the monies to a tax-exempt, nonprofit entity;

(e) repaying documented loans to the legislative candidate's campaign;

(f) donating the monies to another candidate's campaign account;

(g) transferring the monies to an escrow account for the person to use as a candidate for public office; or

(h) some combination of Subsections (4)(a) through (g).

(5) (a) The person shall continue to file the year-end summary report required by Section 20A-11-302 until the statement of dissolution and final summary report required by Section 20A-11-304 are filed with the lieutenant governor.

(b) Any person who fails to file the report required by this Subsection (5) is subject to an administrative penalty of up to \$1,000 for each violation.

Section 4. Section **20A-11-402** is amended to read:

20A-11-402. Officeholder financial reporting requirements -- Termination of duty to report.

(1) An officeholder is active and subject to reporting requirements until the officeholder has filed a statement of dissolution with the lieutenant governor stating that:

(a) the officeholder is no longer receiving contributions or public service assistance and is no longer making expenditures;

(b) the ending balance on the last summary report filed is zero and the balance in the separate bank account required by Sections 20A-11-201 and 20A-11-301 is zero; and

(c) a final summary report in the form required by Section 20A-11-401 showing a zero balance is attached to the statement of dissolution.

(2) A statement of dissolution and a final summary report may be filed at any time.

(3) (a) Each officeholder shall continue to file the year-end summary report required by Section 20A-11-401 until the statement of dissolution and final summary report required by this section are filed with the lieutenant governor.

(b) Any person who fails to file the report required by this Subsection (3) is subject to an administrative penalty of up to \$1,000 for each violation.

(4) When an officeholder leaves office, the person shall dispose of monies remaining in the person's campaign accounts required by Sections 20A-11-201 and 20A-11-301 by:

(a) donating the monies to a registered political party or political action committee;

(b) donating the monies to the state General Fund;

(c) expending the monies for political purposes;

(d) donating the monies to a tax-exempt, nonprofit entity;

(e) repaying documented loans to the officeholder's campaign;

(f) donating the monies to another candidate's campaign account;

(g) transferring the monies to an escrow account for the person to use as a candidate for public office; or

(h) some combination of Subsections (4)(a) through (g).

Section 5. Section **20A-11-1301** is amended to read:

20A-11-1301. School board office candidate -- Campaign requirements.

(1) Each school board office candidate shall deposit each contribution and public service assistance received in one or more separate accounts in a financial institution that are dedicated only to that purpose.

(2) (a) A school board office candidate may not deposit or mingle any contributions or public service assistance received into a personal or business account.

(b) The school board office candidate may not use the monies in those accounts for personal use.

(3) A school board office candidate may not make any political expenditures prohibited by law.

(4) If a person ~~[who]~~ withdraws or is eliminated in a regular general election or is no longer a school board candidate ~~[chooses not to expend the monies remaining in his campaign account]~~, the person shall dispose of monies remaining in the person's campaign account by:

(a) donating the monies to a registered political party or political action committee;

(b) donating the monies to the state General Fund;

(c) expending the monies for political purposes;

(d) donating the monies to a tax-exempt, nonprofit entity;

400 (e) repaying documented loans to the school board office candidate's campaign;
401 (f) donating the monies to another candidate's campaign account;
402 (g) transferring the monies to an escrow account for the person to use as a candidate for
403 public office; or
404 (h) some combination of Subsections (4)(a) through (g).
405 (5) (a) The person shall continue to file the year-end summary report required by
406 Section 20A-11-1302 until the statement of dissolution and final summary report required by
407 Section 20A-11-1304 are filed with:
408 [~~(a)~~] (i) the lieutenant governor in the case of a state school board candidate; and
409 [~~(b)~~] (ii) the county clerk, in the case of a local school board candidate.
410 (b) Any person who fails to file the report required by this Subsection (5) is subject to
411 an administrative penalty of up to \$1,000 for each violation.

Legislative Review Note**as of 11-27-04 2:27 PM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0140

Personal Use of Campaign Funds

27-Jan-05

11:01 AM

State Impact

It is estimated that provisions of this bill can be implemented with existing resources.

Individual and Business Impact

Noncompliant individuals are subject to an administrative penalty of up to \$1,000 for each violation.

Office of the Legislative Fiscal Analyst