

ENROLLED ACT NO. 35, HOUSE OF REPRESENTATIVES

SIXTY-SIXTH LEGISLATURE OF THE STATE OF WYOMING
2022 BUDGET SESSION

AN ACT relating to elections; providing a definition of organization; requiring organizations to file a statement of formation as specified; increasing the threshold for an independent expenditure or electioneering communication requiring an itemized statement; increasing and adding penalties for failure to file as specified; making conforming amendments; adding a penalty of perjury; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 22-25-101 by creating a new subsection (c), by renumbering (c) as (d) and by creating a new paragraph (iv), 22-25-102(a), (e), (f), (h) and (k)(intro), 22-25-106(a)(iv), (h)(intro), (vi) and by creating a new subsection (k), 22-25-107(a)(i) and 22-25-108(f) are amended to read:

22-25-101. Definitions; statement of formation.

(c) Any organization that receives contributions or expends funds totaling in aggregate more than one thousand dollars (\$1,000.00) for the purpose of causing independent expenditures or electioneering communications to be made shall file a statement of formation for the purpose of filing campaign reports in accordance with W.S. 22-25-106(h). Any organization that has not previously filed a statement of formation that is required by this subsection shall file a statement of formation within ten (10) days of causing or intending to cause the independent expenditure or electioneering communication to be made in any primary, general or special election or within twenty-four (24) hours if the independent expenditure or electioneering communication is made within ten (10) days of any primary, general or special election. The statement

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of formation as referenced in this subsection shall be filed in those offices as provided by W.S. 22-25-107 and shall list the:

(i) Name and mailing address of the organization;

(ii) Name and mailing address of the organization's chairman and treasurer, if applicable, or the organization's designee;

(iii) Date the organization formed; and

(iv) Purpose of the organization.

~~(e)~~(d) As used in this chapter:

(i) "Electioneering communication" means, except as otherwise provided by paragraph (ii) of this subsection, any communication, including an advertisement, which is publicly distributed as a billboard, brochure, email, mailing, magazine, pamphlet or periodical, as the component of an internet website or newspaper or by the facilities of a cable television system, electronic communication network, internet streaming service, radio station, telephone or cellular system, television station or satellite system and which:

(A) Refers to or depicts a clearly identified candidate for nomination or election to public office or a clearly identified ballot proposition and which does not expressly advocate the nomination, election or defeat of the candidate or the adoption or defeat of the ballot proposition;

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(B) Can only be reasonably interpreted as an appeal to vote for or against the candidate or ballot proposition;

(C) Is made within thirty (30) calendar days of a primary election, sixty (60) calendar days of a general election or twenty-one (21) calendar days of any special election during which the candidate or ballot proposition will appear on the ballot; and

(D) Is targeted to the electors in the geographic area:

(I) The candidate would represent if elected; or

(II) Affected by the ballot proposition.

(ii) "Electioneering communication" does not mean:

(A) A communication made by an entity as a component of a newsletter or other internal communication of the entity which is distributed only to members or employees of the entity;

(B) A communication consisting of a news report, commentary or editorial or a similar communication, protected by the first amendment to the United States constitution and article 1, section 20 of the Wyoming constitution, which is distributed as a component of an email, internet website, magazine, newspaper or periodical or by the facilities of a cable television system,

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electronic communication network, internet streaming service, radio station, television station or satellite system;

(C) A communication made as part of a public debate or forum that invites at least two (2) opposing candidates for public office or one (1) advocate and one (1) opponent of a ballot proposition or a communication that promotes the debate or forum and is made by or on behalf of the person sponsoring or hosting the debate or forum;

(D) The act of producing or distributing an electioneering communication.

(iii) "Independent expenditure" means an expenditure that is made without consultation or coordination with a candidate, candidate's campaign committee or the agent of a candidate or candidate's campaign committee and which expressly advocates the:

(A) Nomination, election or defeat of a candidate; or

(B) Adoption or defeat of a ballot proposition.

(iv) "Organization", as used in this chapter, means any corporation, partnership, trade union, professional association or civic, fraternal or religious group or other profit or nonprofit entity or any other entity influencing an election, except a political party, political action committee or candidate's campaign committee.

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22-25-102. Contribution of funds or election assistance restricted; limitation on contributions; right to communicate; civil penalty.

(a) Except as otherwise provided in this section, no organization ~~of any kind including a corporation, partnership, trade union, professional association or civic, fraternal or religious group or other profit or nonprofit entity~~ except a political party, political action committee or candidate's campaign committee, ~~organized under W.S. 22-25-101,~~ directly or indirectly through any officer, member, director or employee, shall contribute funds, other items of value or election assistance directly to any candidate or candidate's campaign committee or to any political party or political action committee which directly coordinates with a candidate or a candidate's campaign committee. The secretary of state shall promulgate rules to define direct coordination as prohibited by this section. No person shall solicit or receive a payment or contribution from an organization prohibited from making contributions under this subsection.

(e) Any ~~corporation, person or organization violating~~ violation of the provisions of subsection (a), (b), (c), (j), (m) or (n) of this section is subject to a civil penalty up to five thousand dollars (\$5,000.00) and costs including a reasonable attorney's fee for a first violation and up to ten thousand dollars (\$10,000.00) and costs including a reasonable attorney's fee for a second or subsequent violation which shall be imposed in a court of competent jurisdiction. The amount of penalty imposed shall be in such amount as will deter future actions of a similar nature. An action to impose the civil penalty may be prosecuted by and in the name of any candidate adversely affected by the transgression, any political party, any

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county attorney, any district attorney or the attorney general. Proceeds of the penalty collected shall be paid to the state treasurer and credited as provided in W.S. 8-1-109.

(f) Direct contributions from any ~~organization~~ entity affiliated with a political party do not violate subsection (a) of this section. These contributions shall be a matter of internal party governance. Contributions to political parties are not subject to the limits of subsection (c) of this section provided the contributions are available to use as the appropriate party authorities choose and are not exclusively dedicated to any particular candidate. Contributions donated to a political party which are designated by the donor to be used only for a particular candidate and no other purpose are subject to the limitations of subsection (c) and of this section.

(h) No organization, ~~of any kind, as specified in subsection (a) of this section,~~ political party, political action committee or candidate's campaign committee shall solicit or obtain contributions for any of the purposes specified in subsection (a) of this section from an individual on an automatic basis, including but not limited to a payroll deduction plan or reverse checkoff method, unless the individual who is contributing affirmatively consents in writing to the contribution. Nothing in this subsection shall be construed to authorize contributions otherwise prohibited under this election code.

(k) The prohibitions in this section shall not be construed to prohibit any organization ~~of any kind including a corporation, partnership, trade union, professional association or civic, fraternal or religious group or other profit or nonprofit entity~~ from:

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22-25-106. Filing of campaign reports.

(a) Except as otherwise provided in subsections (g) and (j) of this section and in addition to other reports required by this subsection:

(iv) Reports under this subsection shall set forth the full and complete record of contributions including cash, goods or services and actual and promised expenditures, including all identifiable expenses as set forth in W.S. 22-25-103. For purposes of this section, a contribution is reportable when it is known and in the possession of, or the service has been furnished to, the person or ~~organization—entity~~ required to submit a statement of contributions and expenditures. The date of each contribution of one hundred dollars (\$100.00) or more, any expenditure or obligation, the name of the person from whom received or to whom paid and the purpose of each expenditure or obligation shall be listed. All contributions under one hundred dollars (\$100.00) shall be reported but need not be itemized. Should the accumulation of contributions from a person exceed the one hundred dollar (\$100.00) threshold, all contributions from that person shall be itemized. Contributions, expenditures and obligations itemized in a statement filed by a political action committee, a candidate's campaign committee or by a political party central committee need not be itemized in a candidate's statement;

(h) An organization that expends in excess of ~~five hundred dollars (\$500.00)~~ one thousand dollars (\$1,000.00) in any primary, general or special election to cause an independent expenditure or electioneering communication to be made shall file an itemized statement of contributions

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and expenditures with the appropriate filing office under W.S. 22-25-107. The statement shall:

(vi) Be signed by both the chairman and treasurer of the organization, if those positions are present in the organization, or by the ~~person who caused the independent expenditure or electioneering communication to be made~~ organization's designee.

(k) Reports or statements filed under this section shall be filed under penalty of perjury.

22-25-107. Where reports to be filed.

(a) All reports required under this chapter shall be filed as follows:

(i) Any candidate for a municipal, county, judicial, school or college board office and any political action committee or candidate's campaign committee supporting such a candidate and any political action committee or organization supporting or opposing a municipal initiative or referendum or ballot proposition within the county, or any organization that causes an independent expenditure or electioneering communication to be made within the county, shall file with the county clerk;

22-25-108. Failure of persons to file reports; notice; penalties; reconsideration.

(f) The appropriate filing office or the county attorney, for reports required to be filed with the county clerk, shall issue a final order imposing the civil penalty specified in this subsection against any person failing to

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comply with W.S. 22-25-106 twenty-one (21) days from the date the notice was sent under subsection (b) of this section. The final order shall be sent to the person at their address of record and shall notify the person of the right to request reconsideration of the order as provided in subsection (h) of this section. The filing office or county attorney shall impose the following civil penalty in the final order after giving due consideration to the willfulness of the failure to file, the person's level of experience with reporting requirements under this act, efforts made to obscure the identity of the person required to file and any other factor evidencing an intent to evade reporting requirements under this act:

(i) Up to five hundred dollars (\$500.00) per day beginning on the date of the final order and ending when the report is filed for a failure to file a report with the secretary of state;

(ii) Up to two hundred dollars (\$200.00) per day beginning on the date of the final order and ending when the report is filed for a failure to file a report with the county clerk.

ORIGINAL HOUSE
BILL NO. HB0049

ENGROSSED

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Section 2. This act is effective April 1, 2022.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk