

## CHAPTER 155

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**ELECTIONS**

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**HOUSE BILL 18-1047**

BY REPRESENTATIVE(S) Lontine, Becker K., Bridges, Buckner, Coleman, Gray, Hansen, Herod, Hooton, Kennedy, Kraft-Tharp, Melton, Michaelson Jenet, Rosenthal, Winter, Young, Duran;  
also SENATOR(S) Gardner, Court, Crowder, Fenberg, Fields, Hill, Kagan, Kefalas, Kerr, Martinez Humenik, Merrifield, Moreno, Zenzinger, Grantham.

**AN ACT****CONCERNING TECHNICAL MODIFICATIONS TO THE "FAIR CAMPAIGN PRACTICES ACT" TO FACILITATE ITS ADMINISTRATION.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, 1-45-103, **amend** (10); and **add** (6)(d) and (6)(e) as follows:

**1-45-103. Definitions - repeal.** (6) (d) "CONTRIBUTION" DOES NOT INCLUDE THE PAYMENT OF LEGAL FEES TO ADVISE A CANDIDATE ON COMPLIANCE WITH CAMPAIGN LAWS OR REGULATIONS OR TO REPRESENT A CANDIDATE OR CANDIDATE COMMITTEE IN ANY ACTION IN WHICH THE CANDIDATE OR COMMITTEE HAS BEEN NAMED AS A DEFENDANT. SUCH LEGAL SERVICES ARE NOT UNDERTAKEN "FOR THE BENEFIT OF ANY CANDIDATE COMMITTEE" OR "FOR THE PURPOSE OF PROMOTING THE CANDIDATE'S NOMINATION, RETENTION, RECALL, OR ELECTION" AS THOSE PHRASES ARE USED IN SECTION 2 (5)(a)(II) AND (5)(a)(IV) OF ARTICLE XXVIII OF THE STATE CONSTITUTION.

(e) "CONTRIBUTION" DOES NOT INCLUDE AN INTERVENTION BY THE SECRETARY OF STATE, AS AUTHORIZED BY SECTION 1-45-111.5 (1.5)(g), IN ANY ACTION BROUGHT TO ENFORCE THE PROVISIONS OF ARTICLE XXVIII OF THE STATE CONSTITUTION OR THIS ARTICLE 45.

(10) (a) "Expenditure" ~~shall have~~ HAS the same meaning as set forth in section 2 (8) of article XXVIII of the state constitution.

(b) "EXPENDITURE" DOES NOT INCLUDE LEGAL SERVICES PAID TO DEFEND A

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*Capital letters or bold & italic numbers indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

CANDIDATE OR CANDIDATE COMMITTEE AGAINST ANY ACTION BROUGHT TO ENFORCE THE PROVISIONS OF ARTICLE XXVIII OF THE STATE CONSTITUTION OR THIS ARTICLE 45.

**SECTION 2.** In Colorado Revised Statutes, 1-45-103.7, **amend** (2.5) and (8) as follows:

**1-45-103.7. Contribution limits - treatment of independent expenditure committees - contributions from limited liability companies - voter instructions on spending limits - definitions.** (2.5) (a) AN INDEPENDENT EXPENDITURE COMMITTEE DIFFERS FROM A POLITICAL COMMITTEE IN THAT AN INDEPENDENT EXPENDITURE COMMITTEE DOES NOT COORDINATE ITS ACTIVITIES WITH A CANDIDATE OR POLITICAL PARTY.

(b) An independent expenditure committee shall not be treated as a political committee and, therefore, ~~shall not be~~ IS NOT subject to the requirements of section 3 (5) of article XXVIII of the state constitution.

(8) As used in this section, "limited liability company" ~~includes any form of domestic entity~~ HAS THE SAME MEANING AS "DOMESTIC LIMITED LIABILITY COMPANY" as defined in ~~section 7-90-102 (13), C.R.S.,~~ SECTION 7-90-102 (15) or ~~foreign entity~~ "FOREIGN LIMITED LIABILITY COMPANY" as defined in ~~section 7-90-102 (23), C.R.S.,~~ except that, as used in this section, "limited liability company" shall not include a domestic corporation, a domestic cooperative, a domestic nonprofit association, a domestic nonprofit corporation, a foreign corporation, a foreign cooperative, a foreign nonprofit association, a foreign nonprofit corporation, as those terms are defined in section 7-90-102, C.R.S., a nondomestic corporation as defined in section 1-45-103 (7), or a foreign corporation as defined in ~~section 1-45-103 (10.5)~~ SECTION 7-90-102 (24).

**SECTION 3.** In Colorado Revised Statutes, 1-45-107.5, **repeal** (9) as follows:

**1-45-107.5. Independent expenditures - restrictions on foreign corporations - registration - disclosure - disclaimer requirements.** (9) (a) ~~Any person that donates one thousand dollars or more to any person during any one calendar year for the purpose of making an independent expenditure shall report the donation in accordance with the schedule specified in section 1-45-108 (2) for political committees; except that no report is required for any reporting period in which no donation is made.~~

(b) ~~On an annual basis, the secretary of state shall forward to the department of revenue a summary of the donation reports filed under paragraph (a) of this subsection (9) during the preceding calendar year, and the department shall use such information to ensure that no independent expenditure committee or person, or donor to such committee or person that has filed a report under paragraph (a) of this subsection (9), has deducted any amounts paid for the purpose of making one or more independent expenditures in establishing such committee's, person's, or donor's state income tax liability. The department may use its audit and enforcement authority under section 24-35-108, C.R.S., to ensure the collection of unpaid or delinquent taxes owed by independent expenditure committees, persons that have paid for independent expenditures, or donors to such committees or persons that~~

have filed a report under paragraph (a) of this subsection (9).

**SECTION 4.** In Colorado Revised Statutes, 1-45-108, **amend** (1)(a)(III), (2.5), (7)(a) introductory portion, and (7)(a)(I); and **add** (1)(a)(V) as follows:

**1-45-108. Disclosure - definition - repeal.** (1) (a) (III) Any person who expends one thousand dollars or more per calendar year on electioneering communications or regular biennial school electioneering communications shall report to the secretary of state, in accordance with the disclosure required by this section, the amount expended on the communications and the name and address of any person that contributes more than two hundred fifty dollars per year to the person expending one thousand dollars or more on the communications. If the person making a contribution of more than two hundred fifty dollars is a natural person, the disclosure required by this section must also include the person's occupation and employer. ELECTIONEERING COMMUNICATION REPORTS MUST INCLUDE THE NAME OF THE CANDIDATE OR CANDIDATES UNAMBIGUOUSLY REFERRED TO IN THE ELECTIONEERING COMMUNICATION OR REGULAR BIENNIAL SCHOOL ELECTIONEERING COMMUNICATION.

(V) ANY DISBURSEMENT NOT OTHERWISE DEFINED AS AN EXPENDITURE MAY BE REPORTED TO THE APPROPRIATE OFFICER.

(2.5) (a) EXCEPT AS PROVIDED IN SUBSECTION (2.5)(b) OF THIS SECTION, AND in addition to any report required to be filed with the secretary of state or municipal clerk under this section, all candidate committees, ~~political committees~~, issue committees, and political parties ~~shall~~ MUST file a report with the secretary of state of any contribution of one thousand dollars or more at any time within thirty days preceding the date of the primary election, general election, or regular biennial school election. This report shall be filed with the secretary of state no later than twenty-four hours after receipt of said contribution.

(b) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (2.5)(a) OF THIS SECTION, THE FOLLOWING COMMITTEES NEED NOT FILE THE REPORTS DESCRIBED IN SUBSECTION (2.5)(a) OF THIS SECTION IN THE FOLLOWING INSTANCES:

(I) AN ISSUE COMMITTEE NEED NOT REPORT A CONTRIBUTION OF ONE THOUSAND DOLLARS OR MORE PRECEDING A PRIMARY ELECTION;

(II) A COMMITTEE FOR A CANDIDATE NOT ON THE BALLOT NEED NOT REPORT A CONTRIBUTION OF ONE THOUSAND DOLLARS OR MORE DURING THE OFF-ELECTION YEAR; AND

(III) A CANDIDATE OR CANDIDATE COMMITTEE FOR SCHOOL BOARD NEED NOT REPORT A CONTRIBUTION OF ONE THOUSAND DOLLARS OR MORE DURING THE OFF-ELECTION YEAR.

(7) (a) Notwithstanding any other provision of law, and subject to ~~the provisions of paragraph (b) of this subsection (7)~~ SUBSECTION (7)(b) OF THIS SECTION, a matter ~~shall be~~ IS considered to be a ballot issue or a ballot question for the purpose of determining whether an issue committee has been formally established, thereby necessitating compliance with any disclosure and reporting requirements of this

~~article~~ ARTICLE 45 and article XXVIII of the state constitution, at the earliest of the following:

(I) A title for the matter has been designated and fixed in accordance with law AND ANY MOTION FOR REHEARING HAS BEEN HEARD;

**SECTION 5.** In Colorado Revised Statutes, 1-45-109, **amend** (1) introductory portion, (1)(a)(I), (2)(a), (4)(a), (4)(b), and (4)(c)(I) as follows:

**1-45-109. Filing - where to file - timeliness - definition.** (1) For the purpose of meeting the filing and reporting requirements of this ~~article~~ ARTICLE 45:

(a) The following shall file with the secretary of state:

(I) Candidates for statewide office, the general assembly, district attorney, district court judge, SCHOOL DISTRICT DIRECTOR, or any office representing more than one county; the candidate committees for such candidates; political committees in support of or in opposition to such candidates; issue committees in support of or in opposition to an issue on the ballot in more than one county; small donor committees making contributions to such candidates; and persons expending one thousand dollars or more per calendar year on electioneering communications.

(2) (a) Reports required to be filed by this ~~article~~ ARTICLE 45 are timely if received by the appropriate officer not later than the close of business on the due date. ~~Reports may be filed by fax and are timely if received by the appropriate officer not later than the close of business on the due date only if an original of the report is received by the appropriate officer within seven days of the due date.~~

(4) (a) All reports required to be filed by this ~~article~~ ARTICLE 45 are public records and ~~shall be~~ ARE open to inspection by the public during regular business hours. A copy of the report ~~shall~~ MUST be kept by the appropriate officer and a copy shall be made available immediately in a file for public inspection. WHEN THE SECRETARY OF STATE IS THE APPROPRIATE OFFICER, THE SECRETARY SHALL MAKE REPORTS VIEWABLE ON THE SECRETARY OF STATE'S OFFICIAL WEBSITE.

(b) Any report that is deemed ~~to be~~ incomplete by the appropriate officer ~~shall~~ MUST be accepted ~~on a conditional basis~~ and the committee must be notified ~~by mail as to any deficiencies found~~ OF THE DEFICIENCY. If an e-mail address is on file with the secretary of state, the secretary of state may provide such notification by e-mail. The committee has ~~fifteen business~~ THIRTY CALENDAR days from the date such notice is sent, whether electronically or by United States mail, to file an addendum that cures the deficiencies.

(c) (I) Upon receipt of a complaint brought under section 9 (2)(a) of article XXVIII of the state constitution alleging a failure to file other information required to be filed or disclosed pursuant to article XXVIII of the state constitution or this article 45, the secretary of state shall give notice to the committee by e-mail, OR BY REGULAR MAIL IF AN E-MAIL ADDRESS IS NOT KNOWN, of the deficiencies alleged in the complaint. Service of the notice does not toll or otherwise affect the three-day period during which the secretary of state is required to refer a complaint to an administrative law judge pursuant to section 9 (2)(a) of article XXVIII of the state

constitution. Upon receipt of the notice from the secretary of state, the committee may request from the appropriate officer a postponement of the hearing brought under section 9 (2)(a) of article XXVIII of the state constitution and, if such request is timely submitted, has fifteen business days from the date of the notice to file an addendum to the relevant report that cures any such deficiencies in the disclosure specified in the notice. The committee shall also provide the complainant notice of the entity's intent to cure and a copy of the addendum on the same day that the addendum is filed with the secretary of state. Where the committee files an addendum that cures all deficiencies alleged in the complaint before the expiration of the fifteen-day period specified in this subsection (4)(c)(I), the appropriate officer shall not assess a penalty against the committee that otherwise would have been assessed for the deficiencies for the period from the first date of the alleged violation through the expiration of the cure period.

**SECTION 6.** In Colorado Revised Statutes, 1-45-110, **amend** (3) as follows:

**1-45-110. Candidate affidavit - disclosure statement.** (3) ~~Failure of any person to file the affidavit or the disclosure statement required by subsection (2) of this section shall result in the disqualification of such person as a candidate for the office being sought. Disqualification shall occur only after the designated election official certifying the ballot pursuant to section 1-5-203 (3)(a) has sent a notice to the person by certified mail, return receipt requested, addressed to the person's mailing address. The notice shall state that the person will be disqualified as a candidate if the person fails to file the appropriate document within five business days of receipt of the notice.~~ IF ANY PERSON FAILS TO FILE THE AFFIDAVIT OR THE DISCLOSURE STATEMENT REQUIRED BY SUBSECTION (2) OF THIS SECTION, THE DESIGNATED ELECTION OFFICIAL CERTIFYING THE BALLOT IN ACCORDANCE WITH SECTION 1-5-203 (3)(a) SHALL SEND A NOTICE TO THE PERSON BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE PERSON'S MAILING ADDRESS. THE NOTICE MUST STATE THAT THE PERSON WILL BE DISQUALIFIED AS A CANDIDATE IF THE PERSON FAILS TO FILE THE APPROPRIATE DOCUMENT WITHIN FIVE BUSINESS DAYS OF THE RECEIPT OF THE NOTICE. IF THE PERSON FAILS TO FILE THE APPROPRIATE DOCUMENT WITHIN THAT TIME FRAME, THE DESIGNATED ELECTION OFFICIAL SHALL DISQUALIFY THE CANDIDATE.

**SECTION 7.** In Colorado Revised Statutes, 1-45-111.5, **amend** (1.5)(a) and (2); and **add** (1.5)(g) as follows:

**1-45-111.5. Duties of the secretary of state - enforcement - sanctions - definition.** (1.5) (a) Any person who believes that a violation of either the secretary of state's rules concerning campaign and political finance or this ~~article~~ ARTICLE 45 has occurred may file a written complaint with the secretary of state not later than one hundred eighty days after the date of the occurrence of the alleged violation. The complaint ~~shall be~~ is subject to all applicable procedures specified in section 9 (2) of article XXVIII of the state constitution. THE PERSON FILING THE COMPLAINT MUST SERVE THE COMPLAINT ON THE RESPONDENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, ON THE SAME DAY THE PERSON FILES THE COMPLAINT WITH THE SECRETARY OF STATE. THE PERSON FILING THE COMPLAINT MUST STATE FACTUAL ALLEGATIONS OF A VIOLATION. FOR PURPOSES OF THIS SECTION AND SECTION 9 (2) OF ARTICLE XXVIII OF THE STATE CONSTITUTION, "COMPLAINT" MEANS A SIGNED DOCUMENT THAT ALLEGES A VIOLATION OF ARTICLE XXVIII OF THE STATE CONSTITUTION OR OF THIS ARTICLE 45.

(g) THE SECRETARY OF STATE HAS, AS A MATTER OF RIGHT, THE RIGHT TO INTERVENE IN ANY ACTION PENDING BEFORE THE OFFICE OF ADMINISTRATIVE COURTS OR THE COURT OF APPEALS THAT IS BROUGHT TO ENFORCE THE PROVISIONS OF ARTICLE XXVIII OF THE STATE CONSTITUTION OR THIS ARTICLE.

(2) A party in any action brought to enforce the provisions of article XXVIII of the state constitution or of this ~~article shall be~~ ARTICLE 45 IS ENTITLED TO THE RECOVERY OF THE PARTY'S REASONABLE ATTORNEY FEES AND COSTS FROM ANY ATTORNEY OR PARTY WHO HAS BROUGHT OR DEFENDED THE ACTION, EITHER IN WHOLE OR IN PART, UPON A DETERMINATION BY THE OFFICE OF ADMINISTRATIVE COURTS THAT THE ACTION, OR ANY PART THEREOF, LACKED SUBSTANTIAL JUSTIFICATION OR THAT THE ACTION, OR ANY PART THEREOF, WAS ~~interposed~~ COMMENCED FOR DELAY OR HARASSMENT OR IF IT FINDS THAT AN ATTORNEY OR PARTY UNNECESSARILY EXPANDED THE PROCEEDING BY OTHER IMPROPER CONDUCT, INCLUDING ~~but not limited to~~, ABUSES OF DISCOVERY PROCEDURES AVAILABLE UNDER THE COLORADO RULES OF CIVIL PROCEDURE. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBSECTION (2), NO ATTORNEY FEES MAY BE AWARDED UNDER THIS SUBSECTION (2) UNLESS THE COURT OR ADMINISTRATIVE LAW JUDGE, AS APPLICABLE, HAS FIRST CONSIDERED AND ISSUED WRITTEN FINDINGS REGARDING THE PROVISIONS OF SECTION 13-17-102 (5) AND (6). ~~C.R.S.~~ EITHER PARTY IN AN ACTION IN WHICH THE OFFICE OF ADMINISTRATIVE COURTS AWARDED ATTORNEY FEES AND COSTS MAY APPLY TO A DISTRICT COURT TO CONVERT AN AWARD OF ATTORNEY FEES AND COSTS INTO A DISTRICT COURT JUDGMENT. PROMPTLY UPON THE CONVERSION OF THE AWARD OF ATTORNEY FEES AND COSTS INTO A DISTRICT COURT JUDGMENT, THE CLERK OF THE DISTRICT COURT SHALL MAIL NOTICE OF THE FILING OF THE JUDGMENT TO THE JUDGMENT DEBTOR AT THE ADDRESS GIVEN AND SHALL MAKE A NOTE OF THE MAILING IN THE DOCKET. THE NOTICE MUST INCLUDE THE NAME AND POST-OFFICE ADDRESS OF THE JUDGMENT CREDITOR AND THE JUDGMENT CREDITOR'S LAWYER, IF ANY, IN THIS STATE. IN ADDITION, THE JUDGMENT CREDITOR MAY MAIL A NOTICE OF THE FILING OF THE JUDGMENT TO THE JUDGMENT DEBTOR AND MAY FILE PROOF OF MAILING WITH THE CLERK. LACK OF MAILING NOTICE OF FILING BY THE CLERK SHALL NOT AFFECT THE ENFORCEMENT PROCEEDINGS IF PROOF OF MAILING BY THE JUDGMENT CREDITOR HAS BEEN FILED. FOR PURPOSES OF THIS SUBSECTION (2), "LACKED SUBSTANTIAL JUSTIFICATION" MEANS SUBSTANTIALLY FRIVOLOUS, SUBSTANTIALLY GROUNDLESS, OR SUBSTANTIALLY VEXATIOUS.

**SECTION 8.** In Colorado Revised Statutes, 1-45-117, **amend** (4)(b) as follows:

**1-45-117. State and political subdivisions - limitations on contributions.**

(4) (b) If a board, ~~of county commissioners~~ COMMISSION, OR COUNCIL IS FOUND TO HAVE MADE A CONTRIBUTION OR EXPENDITURE IN VIOLATION OF THIS SECTION, AN INDIVIDUAL MEMBER OF THE BOARD, COMMISSION, OR COUNCIL WHO VOTED IN FAVOR OF OR OTHERWISE AUTHORIZED THE CONTRIBUTION OR EXPENDITURE MAY BE ORDERED TO REIMBURSE AN AMOUNT PURSUANT TO ~~paragraph (a) of this subsection (4)~~ SUBSECTION (4)(a) OF THIS SECTION AS LONG AS THE AMOUNT DOES NOT EXCEED THE AMOUNT ORDERED TO BE REIMBURSED BY ANY OTHER INDIVIDUAL OF THE BOARD, COMMISSION, OR COUNCIL WHO VOTED IN FAVOR OR OTHERWISE AUTHORIZED THE CONTRIBUTION OR EXPENDITURE.

**SECTION 9.** In Colorado Revised Statutes, 24-30-202.4, **amend** (2) as follows:

**24-30-202.4. Collection of debts due the state - controller's duties - creation of debt collection fund - reciprocal debt collection agreements - definitions.**

(2) Except as otherwise provided for institutions of higher education pursuant to

section 23-5-113, ~~C.R.S.~~; and except for those debts under the jurisdiction of the department of revenue referred to in section 24-35-108 (1)(a), under the jurisdiction of the judicial department referred to in section 16-11-101.6, ~~C.R.S.~~, UNDER THE JURISDICTION OF THE DEPARTMENT OF STATE REFERRED TO IN SECTION 1-45-111.5, and under the jurisdiction of the department of labor and employment related to overpayment of unemployment insurance benefits and delinquent taxes referred to in section 8-79-102, ~~C.R.S.~~; all state agencies shall refer to the state controller debts due the state that the agency has been unable to collect within thirty days after such debts have become past due, together with the data and information necessary for the controller to institute collection procedures. Debts are not subject to referral pursuant to this subsection (2) if payment arrangements have been made and payments due in accordance with the terms of the arrangements are not delinquent. The controller may grant a waiver to the requirement that a state agency refer debts within such thirty-day period based upon a documented request and justification provided by a state agency, pursuant to rules promulgated by the department of personnel under article 4 of this ~~title~~ TITLE 24. A waiver may include ~~but shall not be limited to~~ extended periods to collect delinquent debts. For accounts where no waiver to assignment has been granted, the controller shall use all state collection capabilities to collect that debt, including ~~but not limited to~~, the certification of that debt to the department of revenue for offset of that debt against any tax refund due the debtor under the provisions of ~~subparagraph (H) of paragraph (a) of subsection (3)~~ SUBSECTION (3)(a)(II) of this section. No later than one hundred eighty days after receipt by the controller, the controller or the controller's designee shall legally assign all debts that are not claims in process of collection to private counsel or private collection agencies that appear on the list of private counsel or private collection agencies. For the purposes of this section, "claims in process of collection" means any debts on which payments are being made, on which payments have been promised, on which suit has been brought, or any other debts as defined in rules promulgated by the department of personnel pursuant to article 4 of this ~~title~~ TITLE 24. The private counsel or private collection agencies included in the list of private counsel or private collection agencies ~~shall~~ MUST be selected through competition pursuant to the ~~provisions of the~~ "Procurement Code", articles 101 to 112 of this ~~title~~ TITLE 24. Criteria for selection of the private counsel or private collection agencies shall be developed by the executive director of the department of personnel in consultation with the controller, affected state agencies, and the private collection community.

**SECTION 10. Applicability.** This act applies to violations committed on or after the effective date of this act or to written complaints alleging violations of the campaign finance laws of the state filed with the secretary of state on or after the effective date of this act, whichever is applicable.

**SECTION 11. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 23, 2018