

AMENDED IN ASSEMBLY MAY 19, 2005

AMENDED IN ASSEMBLY APRIL 18, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 709

Introduced by Assembly Member Wolk

February 17, 2005

An act to amend Section 18680 of the Elections Code, and to amend Section 83124 of, and to add Section 85301.5 to, the Government Code, relating to the Political Reform Act of 1974.

LEGISLATIVE COUNSEL'S DIGEST

AB 709, as amended, Wolk. Candidate controlled ballot measure committees.

(1) Under existing law, a person who is entrusted with money or things of value for the purpose of promoting or defeating any initiative, referendum, or recall petition or any measure that has qualified for the ballot is deemed a trustee and is prohibited from appropriating the money or things of value to any use or purpose not in the due and lawful execution of the trust. Under existing law, a violation of this provision is punishable by a fine not exceeding \$5,000, or by imprisonment in the state prison for 16 months or 2 or 3 years or in a county jail not exceeding one year, or by both the fine and imprisonment.

~~This bill would eliminate the option of imposing a fine as penalty for the wrongful appropriation of money or things and, because this could result in more sentences of imprisonment in county jails, this bill would impose a state-mandated local program.~~ This bill would further state that expenditures in support of the trustee's candidacy for state elective office or in opposition to a candidate running for the

same elective state office are not within the due and lawful execution of the trust. ~~Expenditures spent~~ *The bill would also state that expenditures of this money on paid advertising that refers to or features the trustee or a candidate running for the same office as the trustee would be illegal are not within the due and lawful execution of the trust.* ~~By creating a new~~ *expanding the application of a crime,* this bill would impose a state-mandated local program.

(2) ~~Existing law prohibits provisions of the Political Reform Act of 1974 prohibit~~ contributions to any candidate for statewide elective office, except a candidate for Governor, totaling more than \$5,000 per election, as adjusted each January of every odd-numbered year.

This bill would prohibit a person from making a contribution or contributions that exceed this limitation to any committee controlled by a candidate for elective state office that is established for the purpose of supporting or opposing state or local ballot measures during the entire period of time the candidate controls the committee. The bill would specify that if a candidate controls more than one ballot measure committee that makes expenditures in support of, or in opposition to the same ballot measure, total contributions to all the committees from the same contributor shall not exceed the contribution limitation.

(3) ~~Under other existing law provisions of the Political Reform Act of 1974,~~ a contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

This bill would apply this provision to a ballot measure committee that is primarily formed to support or oppose a ballot measure or measures and is controlled by a candidate for elective state office and would exempt from this provision a general purpose ballot measure committee.

(4) Existing provisions of the Political Reform Act of 1974 make a violation of the act subject to administrative, civil, and criminal penalties.

This bill would impose a state-mandated local program by imposing potential criminal penalties on persons who violate the provisions of this bill.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(6) The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act ~~to further~~ *by a statute that becomes effective only when approved by the electors, or, alternatively, by a bill that furthers* the act’s purposes with a $\frac{2}{3}$ vote of each house and compliance with specified procedural requirements.

This bill, ~~which would declare that it furthers the purposes of the act, would therefore require a $\frac{2}{3}$ vote~~ *would require the Secretary of State to submit the provisions that amend the Political Reform Act of 1974 for approval to the voters at a statewide election, as specified.*

Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 18680 of the Elections Code is
2 amended to read:

3 18680. Every person who is entrusted with money or things
4 of value for the purpose of promoting or defeating any initiative,
5 referendum, or recall petition, or any measure that has qualified
6 for the ballot is a trustee of the money or things of value. If a
7 person wrongfully appropriates the money or things of value to
8 any use or purpose not in the due and lawful execution of the
9 trust, the person shall be ~~punished~~ *punishable by a fine not*
10 *exceeding five thousand dollars (\$5,000), or by imprisonment in*
11 *the state prison for 16 months or two or three years, or in a*
12 *county jail for a period not exceeding one year, or by both the*
13 *fine and imprisonment. The following expenses are within the*
14 *due and lawful execution of the trust:*

15 (a) Securing signatures to initiative, referendum, or recall
16 petitions.

17 (b) Circulating initiative, referendum, or recall petitions.

18 (c) Holding and conducting public meetings.

19 (d) Printing and circulating prior to an election:

20 (1) Specimen ballots.

21 (2) Handbills.

22 (3) Cards.

- 1 (4) Other papers.
- 2 (e) Advertising.
- 3 (f) Postage.
- 4 (g) Expressage.
- 5 (h) Telegraphing.
- 6 (i) Telephoning.
- 7 (j) All salaries and expenses of:
 - 8 (1) Campaign managers.
 - 9 (2) Lecturers.
 - 10 (3) Solicitors.
 - 11 (4) Agents.
 - 12 (5) All persons employed in transacting business at
 - 13 headquarters or branch offices, if the business transacted is
 - 14 related to promoting or defeating an initiative, referendum, or
 - 15 recall petition, or any measure that has qualified for the ballot.
- 16 (k) Maintaining headquarters and branch offices.
- 17 (l) Renting of rooms for the transaction of the business of an
- 18 association.
- 19 (m) Attorney’s fees and other costs in connection with
- 20 litigation where the litigation arises directly out of any of the
- 21 following:
 - 22 (1) Activities related to promoting or defeating an initiative,
 - 23 referendum, or recall petition, or any measure that has qualified
 - 24 for the ballot.
 - 25 (2) The enactment, by the initiative process, of any ordinance,
 - 26 charter amendment, statute, or constitutional amendment.
 - 27 (3) An election contest or recount.
 - 28 (4) A violation of state or local campaign, disclosure, or
 - 29 election laws.
- 30 The amendment of this section by adding subdivision (m)
- 31 thereto, made at the 1991–92 Regular Session of the Legislature,
- 32 does not constitute a change in, but is declaratory of, the existing
- 33 law.
- 34 (n) Expenses for food, clothing, shelter, and other personal
- 35 needs of the trustee are not within the due and lawful execution
- 36 of the trust. However, expenses for travel and necessary
- 37 accommodations for the trustee are within the due and lawful
- 38 execution of the trust, if the travel and accommodations are
- 39 related to promoting or defeating an initiative, referendum, or
- 40 recall petition or any measure that has qualified for the ballot.

1 (o) Expenditures in support of the trustee’s candidacy for
2 elective state office or in opposition to a candidate running for
3 the same elective state office are not within the due and lawful
4 execution of the trust.

5 (p) Expenditures spent on paid advertising that refers to or
6 features the trustee or a candidate running for the same elective
7 office as the trustee are ~~unlawful~~ *not within the due and lawful*
8 *execution of the trust.*

9 SEC. 2. Section 83124 of the Government Code is amended
10 to read:

11 83124. The commission shall adjust the contribution
12 limitations and voluntary expenditure limitations provisions in
13 Sections 85301, 85301.5, 85302, 85303, and 85400 in January of
14 every odd-numbered year to reflect any increase or decrease in
15 the Consumer Price Index. Those adjustments shall be rounded to
16 the nearest one hundred dollars (\$100) for limitations on
17 contributions and one thousand dollars (\$1,000) for limitations
18 on expenditures.

19 SEC. 3. Section 85301.5 is added to the Government Code, to
20 read:

21 85301.5. (a) A ballot measure committee that is not
22 controlled by a candidate for elective state office is not subject to
23 this section. A ballot measure committee shall become subject to
24 this section once it becomes controlled by a candidate for
25 elective state office. A ballot measure committee that is
26 controlled by an individual who ceases to be a candidate, as set
27 forth in Section 82007, shall no longer be subject to this section.

28 (b) Notwithstanding subdivision (c) of Section 85310, a
29 person shall not make any contribution or contributions that, in
30 the aggregate, exceed the contribution limit set forth in
31 subdivision (b) of Section 85301, to any committee controlled by
32 a candidate for elective state office that is established for the
33 purpose of supporting or opposing state or local ballot measures
34 during the entire period of time the candidate controls the
35 committee. If a candidate controls more than one ballot measure
36 committee that makes expenditures in support of, or in
37 opposition to, the same ballot measure, total contributions to all
38 the committees from the same contributor shall not exceed the
39 limit in subdivision (b) of Section 85301. A ballot measure

1 committee controlled by a candidate for elective state office shall
2 not accept any contribution prohibited by this section.

3 (c) A ballot measure committee primarily formed to support or
4 oppose a ballot measure or measures and controlled by a
5 candidate for elective state office is subject to the postelection
6 fundraising limitations of Section 85316. A general purpose
7 ballot measure committee is not subject to the postelection
8 fundraising limitations of Section 85316.

9 (d) The contribution limit applicable to a ballot measure
10 committee controlled by a candidate for elective state office
11 under this section is subject to periodic adjustment pursuant to
12 Section 83124.

13 SEC. 4. No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 the only costs that may be incurred by a local agency or school
16 district will be incurred because this act creates a new crime or
17 infraction, eliminates a crime or infraction, or changes the
18 penalty for a crime or infraction, within the meaning of Section
19 17556 of the Government Code, or changes the definition of a
20 crime within the meaning of Section 6 of Article XIII B of the
21 California Constitution.

22 ~~SEC. 5. The Legislature finds and declares that the provisions~~
23 ~~of this act further the purposes of the Political Reform Act of~~
24 ~~1974 within the meaning of subdivision (a) of Section 81012 of~~
25 ~~the Government Code.~~

26 *SEC. 5. The Secretary of State shall, pursuant to subdivision*
27 *(b) of Section 81012 of the Government Code, submit Sections 2*
28 *and 3 of this act for approval to the voters at the first statewide*
29 *election held following adoption of this bill by the Legislature,*
30 *notwithstanding Section 9040 of the Elections Code.*