STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE BILL 3130 By: McMullen

AS INTRODUCED

An Act relating to Ethics; prohibiting federal political action committees from making certain contributions; providing penalties for violations; amending Rules 257:10-1-2 and 257:10-1-13 of the Rules of the Ethics Commission (74 O.S. Supp. 2005, Ch.62, App.), which relate to campaign contributions; prohibiting federal political action committees from making certain expenditures; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 187.3 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. No federal political action committee, as defined by Rule 257:1-1-2 of the Rules of the Ethics Commission, registered under the laws of the United States, shall contribute to any campaign fund for or in opposition to a candidate for state office or to any person for the benefit of a candidate for state office, nor shall any such political action committee, directly or through another person, make any loan of money or anything of value, or give or furnish any privilege, favor or other thing of value to any candidate for state office or to any person for the benefit of a candidate for state office.

B. No candidate, candidate committee, or other committee shall knowingly accept contributions given in violation of the provisions of subsection A of this section.

C. Any person who knowingly and willfully violates any provision of this section by contributing an aggregate amount that exceeds Five Thousand Dollars ($5,000.00), upon conviction, shall be guilty of a felony, punishable by a fine of up to four times the amount of the prohibited contribution or by imprisonment in the State Penitentiary for up to one (1) year, or by both such fine and imprisonment.

D. Any person who knowingly and willfully violates any provision of this section by contributing an aggregate amount that is Five Thousand Dollars ($5,000.00) or less, upon conviction, shall be guilty of a misdemeanor, punishable by a fine of not more than three times the amount of the prohibited contribution or One Thousand Dollars ($1,000.00), whichever is greater, or by imprisonment in the county jail for up to one (1) year, or by both such fine and imprisonment.

SECTION 2. AMENDATORY Rule 257:10-1-2 of the Rules of the Ethics Commission (74 O.S. Supp. 2005, Ch. 62, App.), is amended to read as follows:

Rule 257:10-1-2. (a) Limitations on contributions from a person.

(1) No person or family may contribute more than five thousand dollars ($5,000) to a political action committee or a party committee in any calendar year. No political action committee or party committee shall knowingly accept a contribution from a person or family in excess of five thousand dollars ($5,000) in a calendar year. Contributions to be used for federal election activity, as defined in 2 U.S.C. § 431(20), and subject to the requirements of 2 U.S.C. § 441i, commonly referred to as "Levin Funds", shall not be aggregated with other contributions to a party committee.

(2) No person or family may contribute more than five thousand dollars ($5,000) to a candidate for state office or to a candidate committee authorized by such a candidate to accept contributions or

make expenditures on his behalf during a campaign as defined in Chapter 1, Section 2 and as provided in Paragraphs (4) and (5) of this subsection. No candidate or candidate committee shall knowingly accept a contribution in excess of five thousand dollars ($5,000) from a person or family during a campaign.

(3) These restrictions do not apply to:

(A) a committee supporting or opposing a ballot measure;

(B) a candidate making a contribution of his or her own funds, to his or her campaign; or

(C) a political party making a contribution according to the restrictions set forth in Subsection (b) of this section.

(4) For purposes of this subsection, if a candidate:

(A) begins a campaign for a specific state office;

(B) accepts one or more contributions for such campaign but prior to the election therefor chooses not to run for such office and becomes a candidate for a different office; and

(C) transfers all or any part of the contributions accepted for the first campaign to the second campaign;

the second campaign shall be deemed to have begun when the candidate began the first campaign.

(5) For purposes of this subsection, if a candidate:

(A) does not dissolve his or her candidate committee after the election at which the office at stake is decided;

(B) accepts one or more contributions for such committee after such election; and

(C) begins a campaign for the same or another office in a subsequent election cycle;

any contributions accepted within six (6) months prior to the beginning of the campaign for the same or another office in a

subsequent election cycle shall be applied to the limit specified in Paragraph (2) of this subsection for such campaign.

(6) The $5,000 limitation is to be applied collectively and cumulatively so that any contribution made by the entities as set forth in the definition of “person” in Section 2 of Chapter 1 of this title, shall be allocated to the individuals owning such entities in their percentage of ownership. Once the limit of $5,000 is reached, applying all sources to the individual or family, no further contributions can be made during the campaign or calendar year.

(b) Limitations on contributions from a political party committee. A candidate committee shall not accept contributions from a political party of more than:

(1) fifty thousand dollars ($50,000) per campaign in the case of a candidate for governor; and

(2) twenty-five thousand dollars ($25,000) per campaign in the case of a candidate for other non-federal statewide elective office.

CAVEAT: This provision, increasing the amount of contributions a political party may give to its statewide candidates, is inconsistent with Section 187.1 of Title 21 of the Oklahoma Statutes, which attaches a criminal penalty to contributions from any person or family to a state candidate in excess of $5,000.

(c) Contributor statement. Within ten (10) business days of accepting a single contribution exceeding fifty dollars ($50.00), or before accepting multiple contributions from a single source which exceed fifty dollars ($50.00) in the aggregate, persons accepting contributions must obtain from each contributor a statement which shall include:

(1) the date the contribution was given;

(2) the name and address, occupation [e.g."retail sales clerk"] and employer [e.g. "Dillard"], or principal business activity of the contributor; a contribution from a person other than an individual

or a committee shall be reported by the name of the person or committee and not the individual who signed the check;

(3) the amount; if in-kind, a description of the contribution and a good faith estimate of its fair market value;

(4) a declaration that the contribution is freely and voluntarily given from the contributor's personal property, if an individual, or the person or committee's property, if other than an individual;

(5) a declaration that the contributor has not been directly or indirectly compensated or reimbursed for the contribution, if an individual, and, if a person other than an individual or a committee, that the person or committee has not been compensated or reimbursed for the contribution by persons:

(A) other than those from whom contributor statements have been received and of whom disclosure has or will be made; or

(B) if from persons exempted from the definition of political action committee, by other persons; and

(6) the signature of the contributor, or in the case of a committee, the treasurer or, in the treasurer's absence, the deputy treasurer of the committee.

Persons accepting contributions from contributors who contribute by payroll deduction, dues check-off, or similar process shall be required to obtain only one contributor statement annually or at such other times as a change is made in the deduction, check-off, or similar process.

(d) Prohibitions and exceptions to corporate and labor organization contributions and expenditures.

(1) No corporation or labor organization shall contribute to any campaign fund of any party committee of this state or to any other person for the benefit of such party committee or its candidates, nor shall it, through any agent, officer,

representative, employee, attorney, or any other person or persons, so contribute. Nor shall any such corporation, directly or through such other person, make any loan of money or anything of value, or give or furnish any privilege, favor or other thing of value to any party committee, or to any representative of a party committee, or to any other person for it, or to any candidate upon the ticket of any political party.

(2) A corporation or labor organization shall not make a contribution or an expenditure or an independent expenditure to, or for the benefit of, a candidate or committee in connection with an election or for any electioneering communication, except that this provision shall not apply to:

(A) a campaign or committee solely for or against a ballot measure or local question; or

(B) the establishment, administration, and solicitation of contributions to a political action committee to be utilized for political purposes by a corporation or labor organization.

(3) No candidate, candidate committee or other committee shall knowingly accept contributions given in violation of the provisions of Paragraphs (1) and (2) of this subsection.

(4) The provisions of this subsection shall not apply to a bank, savings and loan association or credit union loaning money to a candidate in connection with his own campaign which is to be repaid with interest at a rate comparable to that of equivalent loans for other purposes.

(5) The provisions of this subsection shall not apply to independent expenditures made by a corporation that:

(A) has as an express purpose promoting social, educational, or political ideas and not to generate business income;

(B) does not have shareholders or other persons which have a financial interest in its assets and earnings; and

(C) was not established by a business corporation or other business entity, by a professional association, or by a labor organization and does not receive substantial revenue from such entities. Substantial revenue is rebuttably presumed to be more than ten percent (10%) of total revenues or $10,000, whichever is less, in a calendar year.

(e) Prohibitions relating to committee solicitations and funds. It shall be prohibited for:

(1) a political action committee to accept a contribution or make an expenditure by using anything of value secured:

(A) by physical force, job discrimination, financial reprisals, or threat of the same; or

(B) by dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment, unless the making of such contributions is authorized by the organization's members;

(2) a federal political action committee registered under the laws of the United States to make an expenditure in support of or in opposition to a candidate for state office;

(3) a person to solicit a contribution from an employee in exchange for any advantage or promise of an advantage conditioned upon making a contribution, or reprisal or threat of reprisal related to the failure to make a contribution;

~~(3)~~ (4) a corporation or political action committee of a corporation to solicit contributions to the political action committee from a person other than its members, shareholders, directors, executive and administrative personnel, and their families; and

~~(4)~~ (5) corporate contributions to a committee or person for or against a ballot measure to be commingled with a fund established by such person or committee to contribute to candidate committees or committees which support or oppose candidates.

(f) Prohibition on transfer of funds between committees.

(1) A candidate committee shall not make a contribution to another candidate or make an independent expenditure on behalf of another candidate. The principal candidate committee or an authorized committee of a person, as such terms are defined in Section 431 of Title 2 of the United States Code, shall not make a contribution to a candidate or make an independent expenditure on behalf of a candidate. A candidate or candidate committee shall not accept such a contribution.

(2) This subsection shall not prohibit a candidate or any other person from making a contribution from the candidate's or person’s personal funds to his or her own candidate committee or on behalf of his or her own candidacy or to the committee of another candidate for a different office.

(3) This subsection shall not prohibit a candidate committee from providing its surplus funds or material assets to the state or local central committee of a political party in accordance with the procedures for dissolution of a candidate committee under Sections 19 and 20 of this chapter.

(g) Aggregation of contributions. For purposes of the contribution limitations, the following apply:

(1) Two (2) or more political action committees or party committees are treated as a single entity if the committees:

(A) share the majority of members on their boards of directors;

(B) are owned or controlled by the same majority shareholder or shareholders;

(C) are in a parent subsidiary relationship; or

(D) have by laws so stating; or

(E) are affiliated or connected entities.

(2) A candidate committee and a committee other than a candidate committee are treated as a single committee if the committees both have the candidate or a member of the candidate's immediate family as an officer.

(h) Attribution and aggregation of family contributions.

(1) Contributions by a husband and wife are aggregated.

(2) Contributions by children under eighteen (18) years of age shall be considered to be contributions made by their parent, parents or legal guardian and shall be attributed to the family limit specified in Subsection (a) of this section. In the case of a single custodial parent, the total amount of such a contribution shall be considered to be a contribution made by the single custodial parent.

(i) Restrictions on loans.

(1) A loan is considered a contribution from the lender, guarantor, and endorser of the loan and is subject to the contribution limitations of this section.

(2) A loan to a candidate or the candidate committee shall be by written agreement.

(3) The proceeds of a loan, regardless of the amount, made to a candidate:

(A) by a commercial lending institution;

(B) made in the regular course of business;

(C) on the same terms ordinarily available to members of the public; and

(D) which is secured or guaranteed solely by the candidate;

are not subject to the contribution limits of this section.

(4) A loan from one committee to another is prohibited.

(j) Anonymous and earmarked contributions.

(1) A person shall not make to a committee and a committee shall not accept an anonymous contribution in excess of fifty dollars ($50). The recipient of an anonymous contribution in excess of fifty dollars ($50) shall, within two (2) business days, remit the contribution to the Commission to be deposited with the State Treasurer to the credit of the General Revenue Fund.

(2) For purposes of the contribution limitations imposed by this section, all contributions made by a person, either directly or indirectly, to or for the benefit of a particular candidate committee, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate committee, shall be treated as contributions from such person to such candidate committee. It shall be prohibited for an intermediary or a conduit to make a contribution to a committee in his or her own name rather than the name of the original source of such contribution. For purposes of this paragraph, an intermediary or conduit means a person, who is not the treasurer, deputy treasurer or agent of a committee, but who is given a contribution by another with the understanding that it will be contributed to that committee. The reports shall show the correct name of the person actually making the contribution.

(k) Reimbursement for contribution prohibited. A person shall not, directly or indirectly, reimburse a person for a contribution to a candidate or committee.

(l) Cash contributions.

(1) An individual shall not make to a candidate committee or a committee supporting or opposing a ballot measure and a candidate committee or a committee supporting or opposing a ballot measure shall not accept a contribution of more than fifty dollars ($50) in cash during a campaign as defined in Chapter 1, Section 2. Agents accepting and delivering cash shall deliver contributor statements

disclosing cash contributions equal to the aggregate amount of cash delivered.

(2) A committee, or a person other than an individual, shall not make a contribution in cash.

(m) Certain contributions required to be by written instrument.

(1) An individual shall not make a contribution of more than fifty dollars ($50), other than an in kind contribution, except by written instrument containing the name of the contributor and the name of the payee during a campaign as defined in Chapter 1, Section 2.

(2) A committee, or a person other than an individual, shall not make a contribution, other than in-kind, except by written instrument containing the name of the contributor and the name of the payee.

(n) Use of other funds.

(1) Anything of value which is solicited from the public in the name of or for the benefit of an elective officer or candidate, and which is accepted by an elective officer or candidate, shall be subject to the reporting requirements of this chapter. This would include, but not be limited to, things of value given for an inauguration or renovation of public property. Anything of value accepted by an agent or representative of an elective officer or candidate or by a committee established by, in the name of, or for the benefit of, an elective officer or candidate shall be deemed to be accepted by such elective officer or candidate for purposes of this section.

(2) The use of such things of value shall be limited to the stated purpose or purposes for which such things of value were solicited.

(3) Any surplus things of value which are not needed for the stated purpose or purposes shall be returned to the donors pursuant to a formula by which no donor receives more than his or her

original donation or deposited with the State Treasurer to the credit of the General Revenue Fund.

(o) Auctions. When an auction is held by a committee as a fundraiser, a contributor statement shall be required with respect to each person donating an item to be auctioned and shall include the fair market value of each item donated.

(1) If an item is sold for a price in excess of the established fair market value, the buyer thereof shall be deemed to have made a contribution in the amount of the price paid in excess of the established fair market value and the donor thereof shall be deemed to have made a contribution in the amount of the established fair market value.

(2) If an item is sold at the established fair market value, the donor thereof shall be deemed to have made a contribution in the amount of the established fair market value and the buyer thereof shall not be deemed to have made a contribution.

(3) If an item is sold at less than the established fair market value, the fair market value shall be reduced to the actual sale price and the donor thereof shall be deemed to have made a contribution in the amount of the sale price and the buyer thereof shall not be deemed to have made a contribution.

SECTION 3. AMENDATORY Rule 257:10-1-13 of the Rules of the Ethic Commission (74 O.S. Supp. 2005, Ch. 62, App.), is amended to read as follows:

Rule 257:10-1-13. (a) Periodic reports by all committees.

(1) Except as provided in Paragraphs (2) and (3) of this subsection, the treasurer of each committee or, in the treasurer's absence, the deputy treasurer, other than those specified in Paragraph (3) of this subsection, shall file quarterly reports of contributions and expenditures no later than January 31, April 30, July 31, and October 31, and include all contributions accepted and expenditures made as of December 31, March 31, June 30, and

September 30, respectively. Quarterly reporting periods may be extended to include the month following the end of the quarter when filing a quarterly and final report on the same form but shall be filed no later than the due dates provided in this subsection. The first report filed by a candidate committee shall be the next report due following the filing of a statement of organization.

(2) If a committee has accepted no contributions and has made no expenditures during a reporting period, the treasurer or, in the treasurer's absence, the deputy treasurer shall file a statement of inactivity.

(3) The treasurer or, in the treasurer's absence, the deputy treasurer of each committee supporting or opposing a ballot measure, or supporting or opposing a candidate and a ballot measure, shall file monthly reports of contributions accepted and expenditures made no later than the tenth (10th) day of each month and include all contributions and expenditures made the previous month. The first report filed by such a committee shall be the next report due following the filing of a statement of organization.

(b) Pre election reports by all committees.

(1) A committee shall file a pre election report for each primary, runoff primary and general election held pursuant to Sections 1-101, 1-102 and 1-103 of Title 26 of the Oklahoma Statutes and for any special election, including a special primary election, if any, for which a registered committee accepts a contribution or makes an expenditure in support of or in opposition to a candidate for office in that election cycle or a ballot measure on the ballot in that election.

(2) A pre-election report shall be filed no later than eight (8) days and no earlier than fourteen (14) days before an election. This pre-election report shall include information for all transactions made since the end of the last reporting period through fifteen (15) days before the date of the election. In the event

that the pre-election report filed prior to the Primary is due before the previous quarterly report, the report filed prior to the Primary shall include information for all transactions made for the previous quarter through a period fifteen (15) days before the date of the election.

(3) The pre-election report filed prior to the Primary in an election year shall cover a reporting period beginning April 1 and ending the fifteenth day prior to the Primary. The pre-election reports filed prior to the Primary, Runoff Primary and General Elections shall substitute for the quarterly report due by July 31 and October 31 for a candidate committee during an election year of the candidate or a committee supporting or opposing only candidates in an election cycle.

(4) The first quarterly report due after a General Election in which a committee supported or opposed candidates on the ballot shall cover a period beginning with the first day following the end of the reporting period of the pre-election report for the General Election and end with the last day of the quarter.

(c) Exemptions

(1) ~~Federal committees. Committees registered under the laws of the United States, who contribute more than $500 in the aggregate or make expenditures exceeding $500 in the aggregate in support of or in opposition to a candidate for state office in an election cycle, in filing the reports prescribed by this chapter, may disclose only contributions from Oklahoma residents or contributions to Oklahoma state campaigns for the period prior to and reporting periods following the period during which the contribution to a state candidate for state office was made.~~

~~(2)~~ Exemption for candidate committees with minimal activity. A candidate committee which does not accept contributions exceeding $500 in the aggregate may file an affidavit with the Ethics Commission stating the committee will not accept contributions or

make expenditures exceeding $500 in the aggregate which shall exempt such candidate committee from filing required reports. If the committee later determines it will exceed the threshold, it shall file a statement of organization within five (5) days following the activity and file the next and all succeeding required reports until dissolution.

~~(3)~~ (2) Exemption for candidate committee with minimal calendar year activity

(A) Statement of intent for minimal calendar year activity. A statement of intent for minimal calendar year activity may be filed by a candidate committee by April 30 of any year for the same year, other than the year of the General Election during which the office sought will be filled. The statement of intent must include the name and address of the candidate committee; the treasurer's name, address and telephone number; and a statement that the committee does not intend to accept contributions nor make expenditures exceeding $500 during the calendar year. It must be certified and signed by the treasurer. If the committee later determines it has exceeded $500 in contributions or expenditures during the calendar year for which the statement was filed, it shall file an amended statement of organization within five (5) days of such time and file the next and all succeeding required quarterly reports.

(B) Annual report. All required disclosure for which a statement of intent for minimal calendar year activity is filed must be reported for the calendar year period covered by the statement of intent for minimal calendar year activity on a campaign contributions and expenditures report and must be filed between January

1 and 31 following the end of the calendar year for which the statement was filed.

SECTION 4. This act shall become effective July 1, 2006.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

50-2-9005 SD 01/19/06