

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 HOUSE BILL 3040

By: Reynolds

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5
6 AS INTRODUCED

7 An Act relating to ethics; amending Rules 257:10-1-2
8 and 257:10-1-20 of the Rules of the Ethics Commission
9 (74 O.S. Supp. 2009, Chapter 62, App.), which relate
10 to campaign contributions; requiring certain
11 contributions to be delivered by mail within a
12 certain amount of time; restricting use of campaign
13 contributions and surplus funds by certain persons;
14 and providing an effective date.

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

16 SECTION 1. AMENDATORY Rule 257:10-1-2 of the Rules of
17 the Ethics Commission (74 O.S. Supp. 2009, Chapter 62, App.), is
18 amended to read as follows:

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

21 (1) No person or family may contribute more than five thousand
22 dollars (\$5,000) to a political action committee or a party
23 committee in any calendar year. No political action committee or
24 party committee shall knowingly accept a contribution from a person

1 or family in excess of five thousand dollars (\$5,000) in a calendar
2 year. Contributions to be used for federal election activity, as
3 defined in 2 U.S.C. § 431(20), and subject to the requirements of 2
4 U.S.C. § 441i, commonly referred to as "Levin Funds", shall not be
5 aggregated with other contributions to a party committee.

6 (2) No person or family may contribute more than five thousand
7 dollars (\$5,000) to a candidate for state office or to a candidate
8 committee authorized by such a candidate to accept contributions or
9 make expenditures on his behalf during a campaign as defined in
10 Chapter 1, Section 2 and as provided in Paragraphs (4) and (5) of
11 this subsection. No candidate or candidate committee shall
12 knowingly accept a contribution in excess of five thousand dollars
13 (\$5,000) from a person or family during a campaign.

14 (3) These restrictions do not apply to:

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

16 or

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

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

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

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

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

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

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

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

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

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

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

17 any contributions accepted within six (6) months prior to the
18 beginning of the campaign for the same or another office in a
19 subsequent election cycle shall be applied to the limit specified in
20 Paragraph (2) of this subsection for such campaign.

21 (6) The \$5,000 limitation is to be applied collectively and
22 cumulatively so that any contribution made by the entities as set
23 forth in the definition of "person" in Section 2 of Chapter 1 of
24 this title, shall be allocated to the individuals owning such

1 entities in their percentage of ownership. Once the limit of \$5,000
2 is reached, applying all sources to the individual or family, no
3 further contributions can be made during the campaign or calendar
4 year.

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

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

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

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

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

23 (1) the date the contribution was given;

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1 (2) the name and address, occupation e.g. "retail sales clerk"
2 and employer e.g. "Dillard", or principal business activity of the
3 contributor; a contribution from a person other than an individual
4 or a committee shall be reported by the name of the person or
5 committee and not the individual who signed the check;

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

8 (4) a declaration that the contribution is for a campaign in
9 the State of Oklahoma, and the contribution is freely and
10 voluntarily given from the contributor's personal property, if an
11 individual, or the person or committee's property, if other than an
12 individual;

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

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

21 (B) if from persons exempted from the definition of
22 political action committee, by other persons; and
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1 (6) the signature of the contributor, or in the case of a
2 committee, the treasurer or, in the treasurer's absence, the deputy
3 treasurer of the committee.

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

9 If a contributor statement obtained pursuant to the provisions
10 of this subsection is incomplete, the treasurer shall make at least
11 three efforts after acceptance of the contribution to obtain the
12 missing information. Such efforts shall consist of either a written
13 or electronic request sent to the contributor. Such requests must
14 be made no later than thirty (30) days after acceptance of the
15 contribution. The requests shall not include material on any other
16 subject or any additional solicitation, except that it may include
17 language solely thanking the contributor for the contribution. The
18 requests must clearly ask for the missing information and must
19 include an accurate statement of this rule regarding the collection
20 and reporting of contribution identifications. All requests must
21 include the statement in a clear and conspicuous manner. The
22 requests shall be accompanied by a pre-addressed return post card or
23 envelop for the response material. If the treasurer makes such
24 effort within the time period prescribed in this paragraph, the

1 person accepting the contribution shall be deemed to be in
2 compliance with the provisions of this subsection.

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

5 (1) No corporation or labor organization shall contribute to
6 any campaign fund of any party committee of this state or to any
7 other person for the benefit of such party committee or its
8 candidates, nor shall it, through any agent, officer,
9 representative, employee, attorney, or any other person or persons,
10 so contribute. Nor shall any such corporation or labor
11 organization, directly or through such other person, make any loan
12 of money or anything of value, or give or furnish any privilege,
13 favor or other thing of value to any party committee, or to any
14 representative of a party committee, or to any other person for it,
15 or to any candidate upon the ticket of any political party.

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

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

23 (B) the establishment, administration, and solicitation of
24 contributions to a political action committee to be

1 utilized for political purposes by a corporation or
2 labor organization; or if

3 (C) the communication is susceptible of a reasonable
4 interpretation other than as an appeal to vote for or
5 against a clearly identified state candidate.

6 (3) Permissible use of corporate and labor organization funds
7 for certain electioneering communications. An electioneering
8 communication shall satisfy Subparagraph (2) of this subsection if
9 it meets the requirements of either Subparagraph (3) (A) or (3) (B) of
10 this subsection:

11 (A) Grassroots lobbying communications. Any communication
12 that:

13 (i) exclusively discusses a pending state legislative
14 or executive matter or issue;

15 (ii) urges an officeholder to take a particular
16 position or action with respect to the matter or
17 issue, or urges the public to adopt a particular
18 position and to contact the state officeholder
19 with respect to the matter or issue;

20 (iii) does not mention any election, candidacy,
21 political party, opposing candidate, or voting by
22 the general public; and
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1 (iv) does not take a position on any candidate's or
2 officeholder's character, qualifications, or
3 fitness for office.

4 (B) Commercial and business advertisements. Any
5 communication that:

6 (i) exclusively advertises an elective officer's or
7 state officeholder's business or professional
8 practice or any other product or service;

9 (ii) is made in the ordinary course of business of the
10 entity paying for the communication;

11 (iii) does not mention any election, candidacy,
12 political party, opposing candidate, or voting by
13 the general public; and

14 (iv) does not take a position on any candidate's or
15 officeholder's character, qualifications, or
16 fitness for office.

17 (C) Reporting requirements. Corporations and labor
18 organizations that make an electioneering
19 communication or series of electioneering
20 communications under Paragraph (a) aggregating in
21 excess of \$5,000 in a calendar year shall file
22 statements and reports as required by Subsection (c)
23 of Section 16 of this chapter.
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1 (4) No candidate, candidate committee or other committee shall
2 knowingly accept contributions given in violation of the provisions
3 of Paragraphs (1) and (2) of this subsection.

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

9 (6) The provisions of this subsection shall not apply to
10 independent expenditures or electioneering communications made by a
11 corporation that:

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

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

17 (C) was not established by a business corporation or other
18 business entity, by a professional association, or by
19 a labor organization and does not receive substantial
20 revenue from such entities. Substantial revenue is
21 defined as more than ten percent (10%) of total
22 revenues or \$10,000, whichever is less, in a calendar
23 year.

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1 (e) Prohibitions relating to committee solicitations and funds.

2 It shall be prohibited for:

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

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

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

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

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

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

1 (f) Prohibition on transfer of funds between committees.

2 (1) Candidate committee transfers.

3 (A) A candidate committee shall not make a contribution or
4 transfer to another candidate, or to a political
5 action committee which supports or opposes candidates
6 or ballot measures, nor shall it make an independent
7 expenditure on behalf of another candidate or ballot
8 measure. A political action committee which supports
9 or opposes candidates or ballot measures shall not
10 accept a contribution or transfer from a candidate
11 committee. The principal candidate committee or an
12 authorized committee of a person, as such terms are
13 defined in Section 431 of Title 2 of the United States
14 Code, shall not make a contribution to a candidate or
15 make an independent expenditure on behalf of a
16 candidate. A candidate or candidate committee shall
17 not accept such a contribution.

18 (B) This subsection shall not prohibit a candidate or any
19 other person from making a contribution from the
20 candidate's or person's personal funds to his or her
21 own candidate committee or on behalf of his or her own
22 candidacy or to the committee of another candidate for
23 a different office.

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

7 (2) Political action committee transfers. A political action
8 committee shall not make a contribution to another political action
9 committee. This subsection shall not prohibit a political action
10 committee from making a transfer to its own affiliated or connected
11 entity in accordance with the definition of contribution, Section 2,
12 Paragraph (2), Subparagraph (B) of Chapter 1 of this title.

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

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

- 17 (A) share the majority of members on their boards of
18 directors;
 - 19 (B) are owned or controlled by the same majority
20 shareholder or shareholders;
 - 21 (C) are in a parent-subsidary relationship; or
 - 22 (D) have bylaws so stating; or
 - 23 (E) are affiliated or connected entities.
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1 (2) A candidate committee and a committee other than a
2 candidate committee are treated as a single committee if the
3 committees both have the candidate or a member of the candidate's
4 immediate family as an officer.

5 (h) Attribution and aggregation of family contributions.

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

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

14 (i) Restrictions on loans.

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

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

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

22 (A) by a commercial lending institution;

23 (B) made in the regular course of business;

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

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

5 are not subject to the contribution limits of this section.

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

7 (j) Anonymous and earmarked contributions.

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

14 (2) For purposes of the contribution limitations imposed by
15 this section, all contributions made by a person, either directly or
16 indirectly, to or for the benefit of a particular candidate
17 committee, including contributions which are in any way earmarked or
18 otherwise directed through an intermediary or conduit to such
19 candidate committee, shall be treated as contributions from such
20 person to such candidate committee. It shall be prohibited for an
21 intermediary or a conduit to make a contribution to a committee in
22 his or her own name rather than the name of the original source of
23 such contribution. For purposes of this paragraph, an intermediary
24 or conduit means a person, who is not the treasurer, deputy

1 treasurer or agent of a committee, but who is given a contribution
2 by another with the understanding that it will be contributed to
3 that committee. The reports shall show the correct name of the
4 person actually making the contribution.

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

8 (l) Cash contributions.

9 (1) An individual shall not make to a candidate committee or a
10 committee supporting or opposing a ballot measure and a candidate
11 committee or a committee supporting or opposing a ballot measure
12 shall not accept a contribution of more than fifty dollars (\$50) in
13 cash during a campaign as defined in Chapter 1, Section 2. Agents
14 accepting and delivering cash shall deliver contributor statements
15 disclosing cash contributions equal to the aggregate amount of cash
16 delivered.

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

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

20 (1) An individual shall not make a contribution of more than
21 fifty dollars (\$50), other than an in-kind contribution, except by
22 written instrument containing the name of the contributor and the
23 name of the payee during a campaign as defined in Chapter 1, Section
24 2.

1 (2) A committee, or a person other than an individual, shall
2 not make a contribution, other than in-kind, except by written
3 instrument containing the name of the contributor and the name of
4 the payee, which shall be delivered by United States mail to the
5 payee within thirty (30) days from the date on the written
6 instrument.

7 (n) Use of other funds.

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

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

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

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

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

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

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

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

22 SECTION 2. AMENDATORY Rule 257:10-1-20 of the Rules of
23 the Ethics Commission (74 O.S. Supp. 2009, Chapter 62, App.), is
24 amended to read as follows:

1 Rule 257:10-1-20. (a) Candidate committees.

2 (1) Use of campaign contributions. Contributions accepted by a
3 candidate committee may not be converted by any person to any
4 personal use, or transferred to a candidate committee for use in a
5 future election for a different office, but shall be used, together
6 with any interest income earned on such contributions, to defray any
7 campaign expenditures or any ordinary and necessary nonreimbursed
8 expenses incurred by the person in connection with his duties as a
9 holder of the state office, including, but not limited to:

10 (A) payment of debts of a former election campaign of the
11 same candidate for the same office,

12 (B) payment of expenses for use in a future election
13 campaign of the same candidate for the same office,

14 (C) for political activity,

15 (D) for community activity or

16 (E) for nonreimbursed office related expenses.

17 Said contributions shall not be used for any other purposes except
18 as permitted in Paragraph (3) of this subsection.

19 (2) Designation of use of surplus funds. A candidate whose
20 candidate committee has an unexpended balance of funds not otherwise
21 obligated for the purposes specified in Paragraph (1) of this
22 subsection shall designate how the surplus funds are to be
23 distributed. Uses are limited to those included in Paragraph (3) of
24 this subsection and shall be set forth on the committee's statement

1 of organization. Surplus funds may not be expended for any other
2 purpose. The designated use or uses for surplus funds may be
3 changed by the candidate committee by filing an amended statement of
4 organization, provided that no contributions received prior to the
5 date the amended statement of organization is filed with the
6 Commission may be used for the amended use or uses.

7 (3) Use of surplus funds. The surplus funds may:

8 (A) be deposited with the State Treasurer to the credit of
9 the General Revenue Fund;

10 (B) be returned to the contributors pursuant to any
11 formula approved by the candidate; provided, any
12 amount returned to a contributor shall not exceed the
13 amount of the original contribution;

14 (C) be contributed to a charitable organization;

15 (D) be retained by the candidate or candidate committee
16 for use in a future election for a six-year period
17 following the General Election for the same ~~or a~~
18 ~~different~~ office;

19 (E) be used to defend legal actions or proceedings arising
20 out of the campaign, election, or the performance of
21 the candidate's official duties as a state officer;
22 provided that such funds shall not be used to defend
23 criminal charges;

24 (F) be used for a community activity;

1 (G) be used for political activity;

2 (H) be transferred to the state, county or congressional
3 district committee of a political party, not to
4 include an affiliated or connected entity of a
5 political party; or

6 (I) be distributed using a combination of these options.

7 (b) Other committees.

8 (1) Use of campaign contributions. Contributions accepted by
9 any committee, other than a candidate committee, may not be
10 converted by any person to any personal use and shall be used to
11 defray any campaign expenditures and to further the committee's
12 purposes. Said contributions shall not be used for any other
13 purposes except as permitted in Paragraph (2) or (3) of this
14 subsection. Such a committee with an unexpended balance of funds
15 not otherwise obligated for the payment of expenses to further the
16 committee's purposes shall designate how the surplus funds are to be
17 disposed of on the committee's statement of organization. Surplus
18 funds may not be expended for any other purpose. The designated use
19 or uses for surplus funds may be changed by the committee by filing
20 an amended statement of organization, provided that no contributions
21 received prior to the date the amended statement of organization is
22 filed with the Commission may be used for the amended use or uses.

1 (2) Use of surplus funds by committees supporting or opposing
2 candidates. Surplus funds of committees, other than candidate
3 committees, formed solely to support or oppose candidates may be:

4 (A) deposited with the State Treasurer to the credit of
5 the General Revenue Fund;

6 (B) returned to the contributors pursuant to any formula
7 approved by the committee; provided, any amount
8 returned to a contributor shall not exceed the amount
9 of the original contribution; or

10 (C) donated to another committee.

11 (3) Use of surplus funds by committees supporting or opposing
12 ballot measures. Surplus funds of committees formed to support or
13 oppose ballot measures may be:

14 (A) deposited with the State Treasurer to the credit of
15 the General Revenue Fund;

16 (B) returned to the contributors pursuant to any formula
17 approved by the committee; provided, any amount
18 returned to a contributor shall not exceed the amount
19 of the original contribution; or

20 (C) donated to other committees formed solely to support
21 or oppose ballot measures;

22 (D) donated to a charitable organization; or

23 (E) donated to a community activity.
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1 SECTION 3. This act shall become effective November 1, 2010.

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