

By: Strama

H.B. No. 105

A BILL TO BE ENTITLED

AN ACT

relating to limits on political contributions and expenditures in connection with certain legislative and executive offices; providing civil and criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 253, Election Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. TEXAS CAMPAIGN FAIRNESS ACT

Sec. 253.251. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a political contribution or political expenditure in connection with:

- (1) a statewide office in the executive branch;
- (2) the office of state senator;
- (3) the office of state representative; or
- (4) the office of member, State Board of Education.

Sec. 253.252. DEFINITIONS. In this subchapter:

(1) "Complying candidate" or "complying officeholder" means a candidate who files a declaration of compliance under Section 253.257(a)(1).

(2) "Election cycle" means the period beginning on January 1 of an odd-numbered year and ending on December 31 of the following even-numbered year.

(3) "Noncomplying candidate" means a candidate who:

- (A) files a declaration of intent to exceed the

1 limit on expenditures or the use of personal funds under Section
2 253.257(a)(2);

3 (B) files a declaration of compliance under
4 Section 253.257(a)(1) but later exceeds the limit on expenditures
5 or the use of personal funds;

6 (C) fails to file a declaration of compliance
7 under Section 253.257(a)(1) or a declaration of intent under
8 Section 253.257(a)(2); or

9 (D) violates Section 253.266 or 253.267.

10 Sec. 253.253. CONTRIBUTION LIMITS. (a) A candidate or
11 officeholder may not, except as provided by Subsection (c),
12 knowingly accept political contributions from a person that in the
13 aggregate exceed the limits prescribed by Subsection (b) in an
14 election cycle.

15 (b) The contribution limits are:

16 (1) for a statewide office, \$2,000;

17 (2) for the office of state senator, \$1,000;

18 (3) for the office of state representative, \$500; or

19 (4) for the office of member, State Board of
20 Education, \$1,500.

21 (c) If a candidate has an opponent in the primary election,
22 the limits prescribed by Subsection (b) are doubled, except that a
23 person may not make political contributions that in the aggregate
24 exceed the applicable limit prescribed by Subsection (b):

25 (1) during the period beginning on the first day of the
26 election cycle and ending on the day of the primary election; or

27 (2) during the period beginning on the day after the

1 day of the primary election and ending on the last day of the
2 election cycle.

3 (d) This section does not apply to a political contribution
4 made by an out-of-state political committee.

5 (e) Notwithstanding Section 254.034, a person who receives
6 a political contribution that violates Subsection (a) shall return
7 the contribution to the contributor not later than the later of:

8 (1) the last day of the reporting period in which the
9 contribution is received; or

10 (2) the fifth day after the date the contribution is
11 received.

12 (f) A person who violates this section is liable for a civil
13 penalty not to exceed three times the amount of the political
14 contributions accepted in violation of this section.

15 Sec. 253.254. CONTRIBUTION BY CHILD CONSIDERED TO BE
16 CONTRIBUTION BY INDIVIDUAL. (a) For purposes of Section 253.253,
17 a contribution by the child of an individual is considered to be a
18 contribution by the individual.

19 (b) In this section, "child" means a person under 18 years
20 of age who is not and has not been married or who has not had the
21 disabilities of minority removed for general purposes.

22 Sec. 253.255. RESTRICTIONS ON REIMBURSEMENT OF PERSONAL
23 FUNDS AND PAYMENTS ON CERTAIN LOANS. (a) A noncomplying
24 candidate or officeholder who makes political expenditures from the
25 person's personal funds may not reimburse the personal funds from
26 political contributions in amounts that in the aggregate exceed
27 \$50,000 in an election cycle.

1 (b) A candidate or officeholder who accepts one or more
2 political contributions in the form of loans, including an
3 extension of credit or a guarantee of a loan or extension of credit,
4 from one or more persons related to the candidate or officeholder
5 within the second degree by consanguinity, as determined under
6 Subchapter B, Chapter 573, Government Code, may not use political
7 contributions to repay the loans.

8 (c) A person who is both a candidate and an officeholder may
9 reimburse the person's personal funds only in one capacity.

10 (d) This section does not apply to a candidate for or holder
11 of a statewide office.

12 (e) A person who violates this section is liable for a civil
13 penalty not to exceed three times the amount by which the
14 reimbursement made in violation of this section exceeds the
15 applicable limit prescribed by Subsection (a).

16 Sec. 253.256. NOTICE REQUIRED FOR CERTAIN POLITICAL
17 EXPENDITURES. (a) A person other than a candidate, an
18 officeholder, or the principal political committee of the state
19 executive committee or a county executive committee of a political
20 party may not make political expenditures that in the aggregate
21 exceed the applicable limits prescribed by Section 253.263 for the
22 purpose of supporting or opposing a candidate or assisting a
23 candidate as an officeholder unless the person files with the
24 commission a written declaration of the person's intent to make
25 expenditures that exceed the limit prescribed by Section 253.263.

26 (b) A declaration under Subsection (a) must be filed not
27 later than the earlier of:

1 (1) the date the person makes the political
2 expenditure that causes the person to exceed the limit prescribed
3 by Section 253.263; or

4 (2) the 60th day before the date of the election in
5 connection with which the political expenditures are intended to be
6 made.

7 (c) The commission shall file a declaration received under
8 Subsection (a) with the records of each candidate or officeholder
9 on whose behalf the person filing the declaration intends to make
10 political expenditures. If the person intends to make only
11 political expenditures opposing a candidate, the commission shall
12 file the declaration with the records of each candidate for the
13 office.

14 (d) An expenditure made by a political committee or other
15 association that consists only of costs incurred in contacting the
16 committee's or association's membership may be made without the
17 declaration required by Subsection (a).

18 (e) For purposes of this section, a person who makes a
19 political expenditure benefiting more than one candidate or
20 officeholder shall, in accordance with commission rule, allocate a
21 portion of the expenditure to each candidate or officeholder whom
22 the expenditure benefits in proportion to the benefit received by
23 that candidate or officeholder. For purposes of this subsection:

24 (1) a political expenditure for supporting candidates
25 or assisting officeholders benefits each candidate or officeholder
26 supported or assisted; and

27 (2) a political expenditure for opposing a candidate

1 benefits each opponent of the candidate.

2 (f) A person who violates this section is liable for a civil
3 penalty not to exceed three times the amount of the political
4 expenditures made in violation of this section.

5 Sec. 253.257. VOLUNTARY COMPLIANCE. (a) When a person
6 becomes a candidate for office, the person shall file with the
7 commission:

8 (1) a sworn declaration of compliance stating that the
9 person voluntarily agrees to comply with the applicable limits on
10 expenditures and the use of personal funds prescribed by this
11 subchapter; or

12 (2) a written declaration of the person's intent to
13 make expenditures that exceed the applicable limit prescribed by
14 this subchapter or use of personal funds in an amount exceeding the
15 limit prescribed by this subchapter.

16 (b) The limits on contributions prescribed by this
17 subchapter apply to complying candidates unless suspended as
18 provided by Section 253.258 or 253.263. The limits on
19 contributions and on reimbursement of personal funds prescribed by
20 this subchapter apply to noncomplying candidates regardless of
21 whether the limits on contributions, expenditures, and the use of
22 personal funds are suspended for complying candidates.

23 (c) A candidate may not knowingly accept a campaign
24 contribution or make or authorize a campaign expenditure before the
25 candidate files a declaration under Subsection (a).

26 (d) A person who violates Subsection (c) is liable for a
27 civil penalty not to exceed three times the amount of the political

1 contributions or political expenditures made in violation of this
2 section.

3 Sec. 253.258. EFFECT OF NONCOMPLYING CANDIDATE. (a) A
4 complying candidate or a specific-purpose committee for supporting
5 a complying candidate is not required to comply with the applicable
6 limits on contributions, expenditures, and the use of personal
7 funds prescribed by this subchapter if another person becomes a
8 candidate for the same office and:

9 (1) files a declaration of intent to exceed the
10 applicable limit on expenditures under Section 253.257(a)(2);

11 (2) fails to file a declaration of compliance under
12 Section 253.257(a)(1) or a declaration of intent under Section
13 253.257(a)(2);

14 (3) files a declaration of compliance under Section
15 253.257(a)(1) but later exceeds the applicable limit on
16 expenditures or the use of personal funds; or

17 (4) violates Section 253.266 or 253.267.

18 (b) The executive director of the commission shall issue an
19 order suspending the limits on contributions, expenditures, and the
20 use of personal funds for a specific office not later than the fifth
21 day after the date the executive director determines that:

22 (1) a person has become a candidate for that office
23 and:

24 (A) has filed a declaration of intent to exceed
25 the applicable limits on expenditures and the use of personal funds
26 under Section 253.257(a)(2); or

27 (B) has failed to file a declaration of

1 compliance under Section 253.257(a)(1) or a declaration of intent
2 under Section 253.257(a)(2);

3 (2) a complying candidate for that office has exceeded
4 the applicable limit on expenditures or the use of personal funds
5 prescribed by this subchapter; or

6 (3) a candidate for that office has violated Section
7 253.266 or 253.267.

8 Sec. 253.259. BENEFIT TO COMPLYING CANDIDATE. (a) A
9 complying candidate is entitled to state on political advertising
10 as provided by Section 255.009 that the candidate complies with the
11 Texas Campaign Fairness Act, regardless of whether the limits on
12 contributions, expenditures, and the use of personal funds are
13 later suspended.

14 (b) A noncomplying candidate is not entitled to the benefit
15 provided by this section.

16 Sec. 253.260. EXPENDITURE LIMITS. (a) In each election
17 cycle, a complying candidate may not knowingly make or authorize
18 political expenditures that in the aggregate exceed:

- 19 (1) for a statewide office, \$5 million;
20 (2) for the office of state senator, \$1 million;
21 (3) for the office of state representative, \$500,000;

22 or

23 (4) for the office of member, State Board of
24 Education, \$1 million.

25 (b) A person who violates this section is liable for a civil
26 penalty not to exceed three times the amount by which the political
27 expenditures made in violation of this section exceed the

1 applicable limit prescribed by Subsection (a).

2 Sec. 253.261. EXPENDITURE BY CERTAIN COMMITTEES CONSIDERED
3 EXPENDITURE BY CANDIDATE. (a) For purposes of Section 253.260,
4 an expenditure by a specific-purpose committee for the purpose of
5 supporting a candidate, opposing the candidate's opponent, or
6 assisting the candidate as an officeholder is considered to be an
7 expenditure by the candidate unless the candidate, in an affidavit
8 filed with the commission, states that the candidate's campaign,
9 including the candidate, an aide to the candidate, a campaign
10 officer, or a campaign consultant of the candidate, has not
11 directly or indirectly communicated with the committee in regard to
12 a strategic matter, including polling data, advertising, or voter
13 demographics, in connection with the candidate's campaign.

14 (b) This section applies only to an expenditure of which the
15 candidate or officeholder has notice.

16 (c) An affidavit under this section shall be filed with the
17 next report the candidate or officeholder is required to file under
18 Chapter 254 following the receipt of notice of the expenditure.

19 Sec. 253.262. LIMITS ON USE OF PERSONAL FUNDS. (a) In each
20 election cycle, a complying candidate may not knowingly make or
21 authorize political expenditures from the candidate's personal
22 funds that in the aggregate exceed:

23 (1) for a statewide office, \$100,000; or

24 (2) for an office other than a statewide office,
25 \$50,000.

26 (b) A person who violates this section is liable for a civil
27 penalty not to exceed three times the amount by which the political

1 expenditures made in violation of this section exceed the
2 applicable limit prescribed by Subsection (a).

3 Sec. 253.263. EFFECT OF CERTAIN POLITICAL EXPENDITURES. (a)

4 A complying candidate or a specific-purpose committee for
5 supporting a complying candidate is not required to comply with the
6 applicable limits on contributions, expenditures, and the use of
7 personal funds prescribed by this subchapter if a person makes
8 political expenditures supporting the candidate's opponent,
9 assisting the candidate's opponent as an officeholder, or opposing
10 the candidate that in the aggregate exceed the following amounts:

11 (1) for a statewide office, \$100,000;

12 (2) for the office of state senator, \$50,000;

13 (3) for the office of state representative, \$25,000;

14 or

15 (4) for the office of member, State Board of
16 Education, \$50,000.

17 (b) The executive director of the commission shall issue an
18 order suspending the limits on contributions, expenditures, and the
19 use of personal funds for a specific office not later than the fifth
20 day after the date the executive director determines that:

21 (1) a declaration of intent to make expenditures that
22 exceed the limit prescribed by Subsection (a) is filed in
23 connection with the office as provided by Section 253.256; or

24 (2) a political expenditure that exceeds the limit
25 prescribed by Subsection (a) has been made.

26 (c) The limits prescribed by Subsection (a) do not apply to:

27 (1) an expenditure made by the complying candidate's

1 opponent;

2 (2) an expenditure made by the principal political
3 committee of the state executive committee or a county executive
4 committee of a political party; or

5 (3) an expenditure made by a political committee or
6 other association that consists only of costs incurred in
7 contacting the committee's or association's membership.

8 Sec. 253.264. CONTRIBUTION FROM OR DIRECT CAMPAIGN
9 EXPENDITURE BY POLITICAL PARTY. (a) Except as provided by
10 Subsection (b), a political contribution to or a direct campaign
11 expenditure on behalf of a complying candidate that is made by the
12 principal political committee of the state executive committee or a
13 county executive committee of a political party is considered to be
14 a political expenditure by the candidate for purposes of the
15 expenditure limits prescribed by Section 253.260.

16 (b) Subsection (a) does not apply to a political expenditure
17 for a generic get-out-the-vote campaign or for a written list of two
18 or more candidates that:

19 (1) identifies the party's candidates by name and
20 office sought, office held, or photograph;

21 (2) does not include any reference to the political
22 philosophy or positions on issues of the party's candidates; and

23 (3) is not broadcast, cablecast, published in a
24 newspaper or magazine, or placed on a billboard.

25 Sec. 253.265. RESTRICTION ON EXCEEDING EXPENDITURE
26 LIMITS. (a) A candidate who files a declaration of compliance
27 under Section 253.257(a)(1) and who later files a declaration of

1 intent to exceed the applicable limits on expenditures and the use
2 of personal funds under Section 253.257(a)(2) or a specific-purpose
3 committee for supporting such a candidate may not make a political
4 expenditure that causes the person to exceed the applicable limit
5 on expenditures prescribed by Section 253.260 before the 60th day
6 after the date the candidate files the declaration of intent to
7 exceed the limits on expenditures and the use of personal funds.

8 (b) A person who violates this section is liable for a civil
9 penalty not to exceed three times the amount of political
10 expenditures made in violation of this section.

11 Sec. 253.266. AGREEMENT TO EVADE LIMITS PROHIBITED. (a) A
12 complying candidate may not:

13 (1) solicit a person to campaign as a noncomplying
14 candidate opposing the complying candidate; or

15 (2) enter into an agreement under which a person
16 campaigns as a noncomplying candidate opposing the complying
17 candidate.

18 (b) A candidate who violates this section is considered to
19 be a noncomplying candidate.

20 Sec. 253.267. MISREPRESENTATION OF OPPONENT'S COMPLIANCE
21 WITH OR VIOLATION OF SUBCHAPTER PROHIBITED. (a) A candidate may
22 not knowingly misrepresent that an opponent of the candidate:

23 (1) is a noncomplying candidate; or

24 (2) has violated this subchapter.

25 (b) A candidate who violates this section is considered to
26 be a noncomplying candidate.

27 Sec. 253.268. CIVIL PENALTY. (a) The commission may

1 impose a civil penalty under this subchapter against a person as
2 provided by Subchapter E, Chapter 571, Government Code.

3 (b) The commission shall base the amount of the penalty on:

4 (1) the seriousness of the violation;

5 (2) the history of previous violations;

6 (3) the amount necessary to deter future violations;

7 and

8 (4) any other matter that justice may require.

9 (c) A penalty paid under this subchapter shall be deposited
10 in the general revenue fund to the credit of the commission. The
11 commission may use amounts representing penalties paid under this
12 subchapter only for purposes of enforcing this subchapter.

13 SECTION 2. Chapter 255, Election Code, is amended by adding
14 Section 255.009 to read as follows:

15 Sec. 255.009. DISCLOSURE ON POLITICAL ADVERTISING FOR
16 LEGISLATIVE OR EXECUTIVE OFFICE. (a) This section applies only
17 to a candidate or political committee covered by Subchapter H,
18 Chapter 253.

19 (b) Political advertising by a candidate who files a
20 declaration of intent to comply with the applicable limits on
21 expenditures and the use of personal funds under Subchapter H,
22 Chapter 253, or a specific-purpose committee for supporting such a
23 candidate may include the following statement: "Political
24 advertising paid for by (name of candidate or committee) in
25 compliance with the voluntary limits of the Texas Campaign Fairness
26 Act."

27 (c) Political advertising by a candidate who files a

1 declaration of intent to comply with the applicable limits on
2 expenditures and the use of personal funds under Subchapter H,
3 Chapter 253, or a specific-purpose committee for supporting such a
4 candidate that does not contain the statement prescribed by
5 Subsection (b) must comply with Section 255.001.

6 (d) Political advertising by a candidate who files a
7 declaration of intent to exceed the applicable limits on
8 expenditures and the use of personal funds under Subchapter H,
9 Chapter 253, or a specific-purpose committee for supporting such a
10 candidate must include the following statement: "Political
11 advertising paid for by (name of candidate or committee), (who or
12 which) has rejected the voluntary limits of the Texas Campaign
13 Fairness Act."

14 (e) The commission shall adopt rules providing for:

15 (1) the minimum size of the disclosure required by
16 this section in political advertising that appears on television or
17 in writing; and

18 (2) the minimum duration of the disclosure required by
19 this section in political advertising that appears on television or
20 radio.

21 (f) A person who violates this section or a rule adopted
22 under this section is liable for a civil penalty not to exceed:

23 (1) \$15,000, for a candidate for a statewide office or
24 a specific-purpose committee for supporting such a candidate;

25 (2) \$10,000, for a candidate for the office of state
26 senator or a specific-purpose committee for supporting such a
27 candidate;

1 (3) \$5,000, for a candidate for the office of state
2 representative or a specific-purpose committee for supporting such
3 a candidate; or

4 (4) \$10,000, for a candidate for the office of member,
5 State Board of Education, or a specific-purpose committee for
6 supporting such a candidate.

7 (g) Section 253.268 applies to the imposition and
8 disposition of a civil penalty under this section.

9 SECTION 3. Subchapter H, Chapter 253, Election Code, as
10 added by this Act, applies only to a political contribution
11 accepted or political expenditure made on or after the effective
12 date of this Act. A political contribution accepted or political
13 expenditure made before the effective date of this Act is governed
14 by the law in effect on the date the contribution was accepted or
15 the expenditure was made and is not aggregated with political
16 contributions accepted or political expenditures made on or after
17 the effective date of this Act.

18 SECTION 4. Sections 253.256, 253.257, 253.258, 253.259,
19 253.260, 253.261, 253.262, 253.263, 253.264, 253.265, 253.266, and
20 253.267, Election Code, as added by this Act, are not severable, and
21 none would have been enacted without the others. If any one of those
22 provisions is held invalid, each of those provisions is invalid.

23 SECTION 5. This Act takes effect immediately if it receives
24 a vote of two-thirds of all the members elected to each house, as
25 provided by Section 39, Article III, Texas Constitution. If this
26 Act does not receive the vote necessary for immediate effect, this
27 Act takes effect September 1, 2009.