

By: Smith of Tarrant

H.B. No. 2511

Substitute the following for H.B. No. 2511:

By: Brown of Kaufman

C.S.H.B. No. 2511

A BILL TO BE ENTITLED

AN ACT

relating to political contributions and expenditures; providing criminal penalties.

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

SECTION 1. Section 251.001, Election Code, is amended by amending Subdivisions (2) and (8) and adding Subdivisions (21) through (28) to read as follows:

(2) "Contribution" means a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. The term:

(A) includes:

(i) a loan or extension of credit, other than those expressly excluded by this subdivision;

(ii) [~~and~~] a guarantee of a loan or extension of credit, including a loan described by Subparagraph (i); or

(iii) an in-kind contribution; and

(B) [~~this subdivision. The term~~] does not include:

(i) [~~(A)~~] a loan made in the due course of business by a corporation that is legally engaged in the business of lending money and that has conducted the business continuously for more than one year before the loan is made; or

1 (ii) [~~(B)~~] an expenditure required to be
2 reported under Section 305.006(b), Government Code.

3 (8) "Direct campaign expenditure" means a campaign
4 expenditure that is not an in-kind contribution, and includes
5 expenditures for communications that are express advocacy or an
6 electioneering communication [~~that does not constitute a campaign~~
7 ~~contribution by the person making the expenditure~~].

8 (21) "Administrative expense" means an expenditure
9 for a separate segregated fund or political party incurred in the
10 normal course of business by an organization, regardless of whether
11 the organization engages in political activity. An expenditure is:

12 (A) an administrative expense if the expenditure
13 facilitates the decision-making process, endorsement or
14 contribution determination, and delivery process of the separate
15 segregated fund, including expenditures for:

16 (i) office space maintenance and repairs;
17 (ii) telephone and Internet services;
18 (iii) office equipment;
19 (iv) utilities;
20 (v) general office and meeting supplies;
21 (vi) salaries for routine clerical, data
22 entry, and administrative assistance necessary for the proper
23 administrative operation of the separate segregated fund;

24 (vii) legal and accounting fees for
25 compliance with this title;

26 (viii) routine administrative expenses
27 incurred in establishing and administering a separate segregated

1 fund;

2 (ix) management and supervision of the
3 separate segregated fund, including expenses in holding meetings of
4 the fund's governing body to interview candidates and make
5 endorsements relating to its support;

6 (x) candidate forums in which all
7 candidates for a particular office in an election are invited to
8 participate on the same terms;

9 (xi) the recording of separate segregated
10 fund decisions;

11 (xii) expenses incurred in preparing and
12 delivering contributions; or

13 (xiii) soliciting funds from the restricted
14 class; and

15 (B) not an administrative expense if the
16 expenditure is for:

17 (i) political consulting to support or
18 oppose a candidate;

19 (ii) telephoning to communicate with the
20 public;

21 (iii) brochures and direct mail to persons
22 not in the restricted class;

23 (iv) issue advocacy or electioneering
24 communications;

25 (v) political fund-raising;

26 (vi) voter identification, voter lists, or
27 voter databases other than those related to a restricted class;

1 (vii) polling of persons not in the
2 restricted class; or

3 (viii) recruiting candidates.

4 (22) "In-kind contribution" means:

5 (A) a contribution of goods, services, or any
6 other thing of value, except money, and includes an agreement made
7 or other obligation incurred, whether legally enforceable or not,
8 to make a contribution; or

9 (B) a third-party expenditure by a person that
10 is:

11 (i) made with the prior consent or approval
12 of the candidate, political committee, or political party, or an
13 agent or representative of the candidate, committee, or party; or

14 (ii) created, produced, or distributed at
15 the request or suggestion of:

16 (a) a candidate, political committee,
17 or political party, or the agent or representative of the
18 candidate, committee, or party; or

19 (b) a third party who is paying for
20 the expenditure and the candidate, political committee, or
21 political party, or the agent or representative of the candidate,
22 committee, or party assents to the request or suggestion.

23 (23) "Electioneering communication" means a
24 communication that if taken as a whole and with limited reference to
25 external events, such as the proximity to the election, could only
26 be interpreted by a reasonable person as containing advocacy of the
27 election or defeat of one or more clearly identified candidates or

ballot measures.

(24) "Express advocacy" means a communication that refers to a clearly identified candidate or ballot measure, utilizing phrases such as "Vote for X," "Re-elect your Legislator," "Support the Democratic Nominee," "Cast your Ballot Against (or for) the Republican Challenger," or "Defeat the Incumbent." The term "express advocacy" does not include:

(A) a communication that refers to a clearly identified candidate or ballot measure appearing in a news story, commentary, editorial, or work intended for entertainment distributed through the facilities of a bona fide broadcasting station, newspaper, magazine, or other publication, unless such facilities are owned or controlled by a political party, political committee, or candidate; or

(B) a communication to the restricted class of the person making the communication as provided by Section 253.098.

(25) "Clearly identified" means, as to a candidate:

(A) the use of the candidate's name, nickname, photograph, or picture; or

(B) an unambiguous reference that makes the identity of the candidate apparent, such as a reference to the office held, incumbency, district or area represented, or the candidate's status as a candidate for a political party.

(26) "Membership organization" means a trade association, cooperative, or corporation without capital stock that:

(A) is composed of members, some or all of whom

1 are vested with the authority to operate or administer the
2 organization according to the organization's articles, bylaws,
3 constitution, or other formal organizational documents;

4 (B) expressly states the qualifications and
5 requirements for membership in its articles, bylaws, constitution,
6 or other formal organizational documents;

7 (C) makes its articles, bylaws, constitution, or
8 other formal organizational documents available to its members upon
9 request;

10 (D) solicits persons to become members;

11 (E) expressly acknowledges the acceptance of
12 membership by sending a membership card, including the member's
13 name on a membership newsletter list, or using another means; and

14 (F) is not organized for the principal purpose of
15 influencing the nomination for election, or election, of an
16 individual to public office.

17 (27) "Member" means a person who:

18 (A) currently satisfies the requirements for
19 membership in a membership organization;

20 (B) affirmatively accepts the membership
21 organization's invitation to become a member; and

22 (C) either:

23 (i) has a significant financial attachment
24 to, including a significant investment or ownership interest in,
25 the membership organization or pays membership dues, other than
26 payments to a separate segregated fund, predetermined by the
27 organization; or

1 (ii) has a significant organizational
2 attachment to the membership organization that includes
3 affirmation of membership on at least an annual basis and has an
4 opportunity to participate in the organization's governance.

5 (28) "Restricted class" means the group of individuals
6 who:

7 (A) for a corporation, are the stockholders,
8 employees, and families of the stockholders and employees of the
9 corporation or the corporation's subsidiaries, branches,
10 divisions, affiliates, or departments;

11 (B) for a labor organization, are the members,
12 employees, and families of the members and employees of the labor
13 organization; or

14 (C) for a membership organization, are the
15 members, employees, and families of employees of the organization.

16 SECTION 2. Subchapter D, Chapter 253, Election Code, is
17 amended by adding Section 253.1001 to read as follows:

18 Sec. 253.1001. EXPENDITURES FOR SEPARATE SEGREGATED FUND.

19 (a) A corporation, labor organization, or membership organization,
20 other than a political committee, may make political expenditures
21 from its own treasury funds and property to finance the
22 establishment or administration expenses of its own separate
23 segregated fund.

24 (b) Money in a separate segregated fund from corporate,
25 labor organization, or membership organization treasury funds
26 shall be kept in a separate account and may not be commingled with
27 any other funds. A person who knowingly violates this subsection

1 commits an offense. An offense under this subsection is a Class A
2 misdemeanor.

3 (c) A separate segregated fund shall be treated as a
4 general-purpose committee and shall comply with the provisions of
5 this title applicable to a general-purpose committee as if the
6 separate segregated fund were a general-purpose committee.

7 SECTION 3. Section 253.061, Election Code is amended to
8 read as follows:

9 Sec. 253.061. DIRECT EXPENDITURE OF \$500 [~~\$100~~] OR LESS.
10 Except as otherwise provided by law, an individual not acting in
11 concert with another person may make one or more direct campaign
12 expenditures in an election from the individual's own property if:

13 (1) the total expenditures on any one or more
14 candidates or measures do not exceed \$500 [~~\$100~~]; and

15 (2) the individual receives no reimbursement for the
16 expenditures.

17 SECTION 4. The heading to Section 253.062, Election Code,
18 is amended to read as follows:

19 Sec. 253.062. DIRECT EXPENDITURE EXCEEDING \$500 [~~\$100~~].

20 SECTION 5. Section 253.062(a), Election Code, is amended to
21 read as follows:

22 (a) Except as otherwise provided by law, an individual not
23 acting in concert with another person may make one or more direct
24 campaign expenditures in an election from the individual's own
25 property that exceed \$500 [~~\$100~~] on any one or more candidates or
26 measures if:

27 (1) the individual complies with Chapter 254 as if the

individual were a campaign treasurer of a political committee; and

(2) the individual receives no reimbursement for the expenditures.

SECTION 6. Section 253.098(a), Election Code, is amended to read as follows:

(a) A corporation, ~~or~~ labor organization, or membership organization may make communications on any subject, including communications containing express advocacy or electioneering communications, to its restricted class or any part of that class ~~[one or more direct campaign expenditures from its own property for the purpose of communicating directly with its stockholders or members, as applicable, or with the families of its stockholders or members]~~.

SECTION 7. Section 257.002(a), Election Code, is amended to read as follows:

(a) A political party that accepts a contribution authorized by Section 253.104 may use the contribution only ~~[to]~~:

(1) for its own administrative expenses ~~[defray normal overhead and administrative or operating costs incurred by the party]~~; or

(2) to administer a primary election or convention held by the party.

SECTION 8. Section 253.100, Election Code, is repealed.

SECTION 9. The changes in law made by this Act apply only to a contribution or expenditure made on or after September 1, 2009. A contribution or expenditure made before September 1, 2009, is governed by the law in effect immediately before that date, and the

1 former law is continued in effect for that purpose.

2 SECTION 10. The legislative history and text of this Act may
3 not be construed or used to interpret the meaning of the provisions
4 of the Election Code as they existed before amendment by this Act
5 and may not be construed or used in any manner, directly or
6 indirectly, to interpret the prior law, or its meaning,
7 constitutionality, legality, or clarity, in any pending civil or
8 criminal case.

9 SECTION 11. This Act takes effect September 1, 2009.