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HOUSE BILL 2495

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State of Washington

55th Legislature

1998 Regular Session

By Representatives Pennington and Appelwick; by request of Public Disclosure Commission

Read first time . Referred to Committee on .

1 AN ACT Relating to penalties for violations of public disclosure  
2 laws; amending RCW 42.17.390, 42.17.395, and 42.17.400; and prescribing  
3 penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 42.17.390 and 1993 c 2 s 28 are each amended to read  
6 as follows:

7 One or more of the following civil remedies and sanctions may be  
8 imposed by court order in addition to any other remedies provided by  
9 law:

10 (1) If the court finds that the violation of any provision of this  
11 chapter by any candidate or political committee probably affected the  
12 outcome of any election, the result of said election may be held void  
13 and a special election held within sixty days of such finding. Any  
14 action to void an election shall be commenced within one year of the  
15 date of the election in question. It is intended that this remedy be  
16 imposed freely in all appropriate cases to protect the right of the  
17 electorate to an informed and knowledgeable vote.

18 (2) If any lobbyist or sponsor of any grass roots lobbying campaign  
19 violates any of the provisions of this chapter, his registration may be

1 revoked or suspended and he may be enjoined from receiving compensation  
2 or making expenditures for lobbying: PROVIDED, HOWEVER, That  
3 imposition of such sanction shall not excuse said lobbyist from filing  
4 statements and reports required by this chapter.

5 (3) Any person who violates any of the provisions of this chapter  
6 may be subject to a civil penalty of not more than (~~ten~~) forty  
7 thousand dollars for each such violation. However, a person or entity  
8 who violates RCW 42.17.640 may be ordered to return a contribution  
9 illegally accepted and may be subject to a civil penalty of (~~ten~~)  
10 forty thousand dollars or three times the amount of the contribution  
11 illegally made or accepted, whichever is greater.

12 (4) Any person who fails to file a properly completed statement or  
13 report within the time required by this chapter may be subject to a  
14 civil penalty of ten dollars per day for each day each such delinquency  
15 continues.

16 (5) Any person who fails to report a contribution or expenditure  
17 may be subject to a civil penalty equivalent to the amount he failed to  
18 report.

19 (6) If a candidate or an officer of a candidate's authorized  
20 committee or of a political committee is found to have intentionally  
21 violated this chapter, he or she may be ordered to pay any civil  
22 penalty that is imposed from personal funds.

23 (7) The court may enjoin any person to prevent the doing of any act  
24 herein prohibited, or to compel the performance of any act required  
25 herein.

26 **Sec. 2.** RCW 42.17.395 and 1989 c 175 s 91 are each amended to read  
27 as follows:

28 (1) The commission may (a) determine whether an actual violation of  
29 this chapter has occurred; and (b) issue and enforce an appropriate  
30 order following such determination.

31 (2) The commission, in cases where it chooses to determine whether  
32 an actual violation of this chapter has occurred, shall hold a hearing  
33 pursuant to the Administrative Procedure Act, chapter 34.05 RCW, to  
34 make such determination. Any order that the commission issues under  
35 this section shall be pursuant to such hearing.

36 (3) In lieu of holding a hearing or issuing an order under this  
37 section, the commission may refer the matter to the attorney general or  
38 other enforcement agency as provided in RCW 42.17.360.

1 (4) The person against whom an order is directed under this section  
2 shall be designated as the respondent. The order may require the  
3 respondent to cease and desist from the activity that constitutes a  
4 violation and in addition, or alternatively, may impose one or more of  
5 the remedies provided in RCW 42.17.390(~~((1) (b), (c), (d), or (e):~~  
6 ~~PROVIDED, That)) (2), (3), (4), (5), or (6). However, no individual~~  
7 penalty assessed by the commission may exceed (~~(one))~~ four thousand  
8 dollars, and in any case where multiple violations are involved in a  
9 single complaint or hearing, the maximum aggregate penalty may not  
10 exceed (~~(two))~~ ten thousand (~~(five hundred))~~ dollars.

11 (5) An order issued by the commission under this section shall be  
12 subject to judicial review under the Administrative Procedure Act,  
13 chapter 34.05 RCW. If the commission's order is not satisfied and no  
14 petition for review is filed within thirty days as provided in RCW  
15 34.05.542, the commission may petition a court of competent  
16 jurisdiction of any county in which a petition for review could be  
17 filed under that section, for an order of enforcement. Proceedings in  
18 connection with the commission's petition shall be in accordance with  
19 RCW 42.17.397.

20 (6) A candidate who has not complied with an order issued under RCW  
21 42.17.390 or this section, and the remedies imposed thereunder, shall  
22 not solicit or accept contributions or make expenditures until the  
23 candidate has complied with the order and the remedies so imposed.

24 (7)(a) A political committee that has not complied with an order  
25 issued under RCW 42.17.390 or this section, and the remedies imposed  
26 thereunder, shall not solicit or accept contributions or make  
27 expenditures until it has complied with the order and the remedies so  
28 imposed. This restriction applies to the political committee against  
29 whom the order and remedies were issued as well as a political  
30 committee that has a majority of the same officers as the committee  
31 that is subject to the order.

32 (b) If an officer of a political committee has not complied with an  
33 order issued under RCW 42.17.390 or this section, and the remedies  
34 imposed thereunder, then the political committee shall not solicit or  
35 accept contributions or make expenditures until the officer has  
36 complied with the order and the remedies so imposed. This restriction  
37 applies to the committee of which the individual subject to the order  
38 was an officer at the time of the violation as well as any other  
39 political committee of which the individual is an officer.

1       (8) A person who has not complied with an order issued under RCW  
2 42.17.390 or this section, and the remedies imposed thereunder, shall  
3 not register as a lobbyist, receive compensation as a lobbyist, or make  
4 expenditures for lobbying expenses until the person has complied with  
5 the order and the remedies so imposed. If the person is presently  
6 registered as a lobbyist or a lobbyist employer, the commission may  
7 suspend or revoke the person's registration.

8       (9) A sponsor of a grass roots lobbying campaign that has not  
9 complied with an order issued under RCW 42.17.390 or this section, and  
10 the remedies imposed thereunder, may not receive contributions or make  
11 expenditures for grass roots lobbying purposes until the sponsor has  
12 complied with the order and the remedies so imposed.

13       **Sec. 3.** RCW 42.17.400 and 1975 1st ex.s. c 294 s 27 are each  
14 amended to read as follows:

15       (1) The attorney general and the prosecuting authorities of  
16 political subdivisions of this state may bring civil actions in the  
17 name of the state for any appropriate civil remedy, including but not  
18 limited to the special remedies provided in RCW 42.17.390.

19       (2) The attorney general and the prosecuting authorities of  
20 political subdivisions of this state may investigate or cause to be  
21 investigated the activities of any person who there is reason to  
22 believe is or has been acting in violation of this chapter, and may  
23 require any such person or any other person reasonably believed to have  
24 information concerning the activities of such person to appear at a  
25 time and place designated in the county in which such person resides or  
26 is found, to give such information under oath and to produce all  
27 accounts, bills, receipts, books, papers, and documents ~~((which))~~ that  
28 may be relevant or material to any investigation authorized under this  
29 chapter.

30       (3) When the attorney general or the prosecuting authority of any  
31 political subdivision of this state requires the attendance of any  
32 person to obtain such information or the production of the accounts,  
33 bills, receipts, books, papers, and documents ~~((which))~~ that may be  
34 relevant or material to any investigation authorized under this  
35 chapter, he shall issue an order setting forth the time when and the  
36 place where attendance is required and shall cause the ~~((same))~~ order  
37 to be delivered to or sent by ~~((registered))~~ certified mail to the  
38 person at least fourteen days before the date fixed for attendance.

1 ((Such)) The order (~~shall have~~) has the same force and effect as a  
2 subpoena, (~~shall be~~) is effective state-wide, and, upon application  
3 of the attorney general or (~~said~~) the prosecuting authority,  
4 obedience to the order may be enforced by any superior court judge in  
5 the county where the person receiving it resides or is found, in the  
6 same manner as though the order were a subpoena. The court, after  
7 hearing, for good cause, and upon application of any person aggrieved  
8 by the order, (~~shall have the right to~~) may alter, amend, revise,  
9 suspend, or postpone all or any part of its provisions. In any case  
10 where the order is not enforced by the court according to its terms,  
11 the reasons for the court's actions (~~shall~~) must be clearly stated in  
12 writing, and (~~such~~) the action (~~shall be~~) is subject to review by  
13 the appellate courts by certiorari or other appropriate proceeding.

14 (4) Any person who has notified the commission, the attorney  
15 general, and the prosecuting attorney in the county in which the  
16 violation occurred in writing that there is reason to believe that some  
17 provision of this chapter is being or has been violated may himself  
18 bring in the name of the state any of the actions (hereinafter referred  
19 to as a citizen's action) authorized under this chapter. This citizen  
20 action may be brought only if the commission has failed to bring the  
21 matter to a hearing under RCW 42.17.395 or if the attorney general and  
22 the prosecuting attorney have failed to commence (~~an~~) a court action  
23 (~~hereunder~~) under this section within (~~forty-five~~) one hundred  
24 twenty days after (~~such~~) the notice and (~~such~~) the person has  
25 thereafter further notified the commission, the attorney general, and  
26 the prosecuting attorney that (~~said~~) that person will commence a  
27 citizen's action within ten days upon their failure so to do, and the  
28 commission, the attorney general, and the prosecuting attorney have in  
29 fact failed to bring such action within ten days of receipt of (~~said~~)  
30 the second notice. If the person who brings the citizen's action  
31 prevails, the judgment awarded (~~shall~~) escheats to the state, but  
32 (~~he shall be~~) the person who brought the action is entitled to be  
33 reimbursed by the (~~state of Washington~~) defendant for costs and  
34 attorney's fees he has incurred(~~:- PROVIDED, That~~). However, in the  
35 case of a citizen's action (~~which~~) that is dismissed and (~~which~~)  
36 that the court also finds was brought without reasonable cause, the  
37 court may order the person commencing the action to pay all costs of  
38 trial and reasonable attorney's fees incurred by the defendant.

1 (5) In any action brought under this section, the court may award  
2 to the state all costs of investigation and trial, including a  
3 reasonable attorney's fee to be fixed by the court. If the violation  
4 is found to have been intentional, the amount of the judgment, which  
5 shall for this purpose include the costs, may be trebled as punitive  
6 damages. If damages or trebled damages are awarded in such an action  
7 brought against a lobbyist, the judgment may be awarded against the  
8 lobbyist, and the lobbyist's employer or employers joined as  
9 defendants, jointly, severally, or both. If the defendant prevails, he  
10 shall be awarded all costs of trial, and may be awarded a reasonable  
11 attorney's fee to be fixed by the court to be paid by the state of  
12 Washington.

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