Arkansas Sentencing Commission

Impact Assessment for HB1008 Sponsored by Representatives Tucker, V. Flowers, et al.

Subtitle TO INCREASE THE PENALTY FOR TAKING CAMPAIGN FUNDS AS PERSONAL INCOME; AND TO AMEND PROVISIONS OF ARKANSAS LAW RESULTING FROM INITIATED ACT 1 OF 1990 AND INITIATED ACT 1 OF 1996.

Impact Summary[1] Minimal, affecting fewer than ten offenders per year.

Change from current law[2] Amends Arkansas Code Annotated § 7-6-202, Penalties. Knowingly failing to comply with this subchapter is a Class A misdemeanor, *unless a different penalty applies under this subchapter*. Italicized language is proposed by this bill.

Amends Arkansas Code Annotated § 7-6-203(f)(1), Contributions – Limitations – Acceptance or solicitation – Use as personal income – Disposition. Under current law, taking campaign funds as personal income is a Class A misdemeanor, regardless of the value of the benefit received. See attached for a complete reprint of the current code provision.

Under the proposed bill, taking campaign funds as personal income is penalized as follows: a Class A misdemeanor if the value of the benefit is less than five hundred dollars ($500); a Class D felony if the value of the benefit is five hundred dollars ($500) or more but less than five thousand dollars ($5,000); a Class C felony if the value of the benefit is five thousand dollars ($5,000) or more but less than twenty-five thousand dollars ($25,000); or a Class B felony if the value of the benefit is twenty-five thousand dollars ($25,000) or more.

Impact Information
The Administrative Office of the Courts reports that for the three year period beginning January 1, 2013, and ending December 31, 2015, there were zero convictions for a violation of § 7-6-202, Penalties, a Class A misdemeanor, as currently written. This penalty provision covers ALL prohibited conduct in the chapter, including the provision being amended by this proposed bill.

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[1] This impact assessment was prepared (1/10/2017, 12:37 p.m.) by the staff of the Arkansas Sentencing Commission pursuant to A. C. A. § 16-90-802(d)(6) with data supplied by the Arkansas Department of Correction and the Administrative Office of the Courts. A micro-simulation model may be used for bills which have the potential for significant impact on correctional resources. The following designations will be used: "minimal" = less than 10 offenders per year will be affected; "medium" = would require budgetary increases for ADC inmate costs; and "major" = would require budgetary increases for ADC inmate costs and construction costs for additional beds.

[2] Standard punishment ranges:

				Misdemeanors	
Class Y	10-40 years or life	Class C	3-10 years; up to $10,000	Class A	Up to 1 year; up to $2,500
Class A	6-30 years; up to $15,000	Class D	0-6 years; up to $10,000	Class B	Up to 90 days; up to $1,000
Class B	5-20 years; up to $15,000	Unclassified	As specified in statute	Class C	Up to 30 days; up to $500

A.C.A. § 7-6-203. Contributions -- Limitations -- Acceptance or solicitation -- Use as personal income -- Disposition.

(a) (1) (A) It shall be unlawful for any candidate for any public office or for any person acting on the candidate's behalf to accept campaign contributions in excess of two thousand seven hundred dollars ($2,700) per election from:

(i) An individual;

(ii) A political party that meets the definition of a political party under § 7-1-101;

(iii) A political party that meets the requirements of § 7-7-205;

(iv) A county political party committee;

(v) A legislative caucus committee; or

(vi) An approved political action committee.

(B) It shall be unlawful for a candidate for a public office or for any person acting on the candidate's behalf to accept a campaign contribution from a prospective contributor other than those under subdivisions (a)(1)(A)(i)-(vi) of this section.

(2) A candidate may accept a campaign contribution or contributions up to the maximum amount from any prospective contributor under subdivisions (a)(1)(A)(i)-(vi) of this section for each election, whether opposed or unopposed.

(b) (1) It shall be unlawful for any person permitted to make a contribution under subdivisions (a)(1)(A)(i)-(vi) of this section to make a contribution to a candidate for any public office or to any person acting on the candidate's behalf, which in the aggregate exceeds two thousand seven hundred dollars ($2,700) per election.

(2) A person permitted to make a contribution or contributions under subdivisions (a)(1)(A)(i)-(vi) of this section may make a contribution or contributions up to the maximum amount to a candidate for each election, whether opposed or unopposed.

(c) The limitation shall not apply to loans made by a candidate from his or her own personal funds to the campaign, contributions made by a candidate from his or her personal funds to the campaign, or to personal loans made by financial institutions to the candidate and applied to his or her campaign.

(d) (1) It shall be unlawful for any candidate for any public office or any person acting in the candidate's behalf to accept any contribution from a prohibited political action committee for any election.

(2) It shall be unlawful for any prohibited political action committee to make a contribution to a candidate for public office in an election.

(3) It shall be unlawful for any ballot question committee, legislative question committee, political party, county political party committee, or approved political action committee to accept any contribution from a prohibited political action committee.

(4) It shall be unlawful for any prohibited political action committee to make a contribution to:

(A) A ballot question committee;

(B) A legislative question committee;

(C) A political party;

(D) A county political party committee; or

(E) An approved political action committee.

(e) It shall be unlawful for any candidate for public office, any person acting in the candidate's behalf, or any exploratory committee to solicit or accept campaign contributions more than two (2) years before an election at which the candidate seeks nomination or election. This subsection shall not prohibit the solicitation or acceptance of a contribution for the sole purpose of raising funds to retire a previous campaign debt.

(f) (1) A candidate shall not take any campaign funds as personal income. This subdivision (f)(1) shall not apply to campaign funds that were:

(A) Accumulated prior to the passage of Initiated Act 1 of 1990; or

(B) Disposed of prior to July 28, 1995.

(2) A candidate shall not take any campaign funds as income for his or her spouse or dependent children, except that:

(A) This subsection shall not prohibit a candidate who has an opponent from employing his or her spouse or dependent children as campaign workers; and

(B) Any candidate who has an opponent and who, during the campaign and before the election, takes a leave of absence without pay from his or her primary place of employment shall be authorized to take campaign funds during the campaign and before the election as personal income up to the amount of employment income lost as a result of such leave of absence.

(3) A candidate who takes campaign funds during the campaign and before the election under a leave of absence pursuant to the provisions of subdivision (f)(2) of this section may elect to treat the campaign funds as a loan from the campaign fund to the candidate to be paid back to the campaign fund by the candidate.

(4) (A) For purposes of this subsection, a candidate who uses campaign funds to fulfill any commitment, obligation, or expense that would exist regardless of the candidate's campaign shall be deemed to have taken campaign funds as personal income.

(B) The use of campaign funds to purchase a cake or other perishable item of food at a fund-raising event held by a volunteer agency, as defined in § 16-6-103, shall not be considered a taking of campaign funds as personal income.

(C) The use of campaign funds to purchase advertising prior to the date the final report is due to be filed thanking voters for their support shall not be considered a taking of campaign funds as personal income.

(D) The use of campaign funds to pay a candidate's own personal expenses for food, lodging, or travel to attend a national presidential nominating convention shall not be considered a taking of campaign funds as personal income.

(g) (1) Within thirty (30) days following the end of the month in which an election is held or a candidate has withdrawn, a candidate shall turn over surplus campaign funds to either:

(A) The Treasurer of State for the benefit of the General Revenue Fund Account of the State Apportionment Fund;

(B) A political party as defined in § 7-1-101 or a political party caucus of the General Assembly, the Senate, or the House of Representatives;

(C) A nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code;

(D) Cities of the first class, cities of the second class, or incorporated towns; or

(E) The contributors to the candidate's campaign.

(2) If the candidate's campaign has not ended, disposal of surplus campaign funds shall not be required and the candidate may carry forward any remaining funds to the general primary election, general election, or general runoff election for that same office.

(3) (A) If an unopposed candidate agrees not to solicit further campaign contributions by filing an affidavit declaring such an agreement, the candidate may dispose of any surplus campaign funds prior to a general election as soon as the time has passed to declare an intent to be a write-in candidate pursuant to § 7-5-205.

(B) For an unopposed nonpartisan candidate, the affidavit may be filed after the deadlines have passed to declare as a filing fee candidate, petition candidate, or write-in candidate under § 7-10-103.

(C) The affidavit shall be filed in the office in which the candidate is required to file reports of contributions received and expenditures made.

(D) Unopposed candidates and defeated candidates who file the affidavit are exempt from further reporting requirements provided that the affidavit contains:

(i) All campaign activity not previously reported; and

(ii) A statement that the candidate's campaign fund has a zero ($0.00) balance.

(4) (A) Carryover funds may be expended at any time for any purpose not prohibited by this chapter and may be used as campaign funds for seeking any public office. Nothing shall prohibit a person at any time from disposing of all or any portion of his or her carryover funds in the same manner as for surplus campaign funds. However, the candidate shall not take the funds as personal income or as income for his or her spouse or dependent children.

(B) (i) When a person having carryover funds files as a candidate for public office, his or her carryover funds shall be transferred to the person's active campaign fund. Once transferred, the funds will no longer be treated as carryover funds.

(ii) This subdivision (g)(4)(B) shall not apply to carryover funds from an election held prior to July 1, 1997.

(iii) This subdivision (g)(4)(B) shall not apply to a campaign debt.

(C) (i) If carryover funds are expended prior to transferring the funds to an active campaign fund, the expenditures shall be reported pursuant to this subdivision (g)(4)(C). A person shall file an expenditure report concerning carryover funds if, since the last report concerning the carryover funds, the person has expended in excess of five hundred dollars ($500). The report shall be filed at the office in which the candidate was required to file his or her campaign contribution and expenditure reports for the previous campaign not later than fifteen (15) days after a calendar quarter in which a report becomes required. No report is required in any calendar quarter in which the cumulative expenditure limit has not been exceeded since the person's last report.

(ii) The person shall also file an expenditure report for the calendar quarter in which he or she transfers the carryover funds to an active campaign fund.

(iii) (a) A person who retains carryover funds shall file an annual report outlining the status of the carryover fund account as of December 31 unless the person has filed a quarterly report during the calendar year pursuant to subdivisions (g)(4)(C)(i) and (ii) of this section.

(b) The annual report shall be due by January 31 of each year.

(c) A person who retains carryover funds from a general election held in November or a runoff election held in November is not required to file an annual report for the year of the general election or runoff election from which carryover funds were retained.

(iv) The carryover fund reports of a candidate for school district, township, municipal, or county office shall be filed with the county clerk of the county in which the election was held.

(v) The carryover fund reports of a candidate for state or district office shall be filed with the Secretary of State.

(D) (i) Carryover funds may be retained by a person for not more than ten (10) years after the last election at which he or she was a candidate, or if applicable, not more than ten (10) years after the last day that the person held office, and any remaining carryover funds shall be disposed of in the same manner as for surplus campaign funds.

(ii) (a) The officer with whom the person last filed a final campaign report shall provide the person timely notice of the requirements of this subdivision (g)(4)(D) prior to the expiration of the ten-year period.

(b) However, failure to provide the notice does not relieve the person of his or her obligation under this subsection.

(5) After the date of an election at which the person is a candidate for nomination or election, the person shall not accept campaign contributions for that election except for the sole purpose of raising funds to retire campaign debt.

(6) Surplus campaign funds or carryover funds given to a political party caucus shall be segregated in an account separated from other caucus funds and shall not be used:

(A) By the political party caucus to make a campaign contribution; or

(B) To provide any personal income to any candidate who donated surplus campaign funds or carryover funds.

(h) A candidate may maintain his or her campaign funds in one (1) or more campaign accounts. Campaign funds shall not be placed in an account containing personal or business funds.

(i) (1) The contribution limits under subdivision (a)(1)(A) and subdivision (b)(1) of this section shall be adjusted at the beginning of each odd-numbered year in an amount equal to the percentage certified to the Federal Election Commission by the Bureau of Labor Statistics of the United States Department of Labor under 52 U.S.C. § 30116(c) as existing on January 1, 2015.

(2) If the amount after adjustment under subdivision (i)(1) of this section is not a multiple of one hundred dollars ($100), the Arkansas Ethics Commission shall round the amount to the nearest multiple of one hundred dollars ($100).

(3) The Arkansas Ethics Commission shall promulgate rules identifying the adjusted contribution limit under subdivision (i)(1) of this section.

HISTORY: Acts 1975, No. 788, § 2; 1977, No. 312, § 6; 1981, No. 690, § 1; A.S.A. 1947, § 3-1110; Init. Meas. 1990, No. 1, §§ 2, 3; Acts 1993, No. 1195, § 1; 1993, No. 1196, § 1; 1995, No. 863, §§ 1-3; 1995, No. 1296, § 41; Init. Meas. 1996, No. 1, §§ 2, 3; Acts 1997, No. 116, § 1; 1997, No. 491, §§ 2, 3; 1999, No. 553, § 3; 1999, No. 1057, § 1; 2001, No. 954, § 1; 2001, No. 1839, § 2; 2003, No. 195, §§ 2, 3; 2003, No. 248, § 1; 2005, No. 1284, §§ 3, 4; 2005, No. 1413, § 1; 2005, No. 1695, § 1; 2007, No. 221, § 2; 2009, No. 340, § 1; 2009, No. 473, §§ 3, 4; 2009, No. 1204, § 2; 2011, No. 721, §§ 3, 4; 2013, No. 382, § 1; 2013, No. 1110, § 7; 2015, No. 142, § 1; 2015, No. 1280, §§ 5-7.