
SENATE BILL 5109

State of Washington

67th Legislature

2021 Regular Session

By Senator Ericksen

Prefiled 01/07/21.

1 AN ACT Relating to limiting the attorney general's ability to
2 seek excessive sanctions under the fair campaign practices act
3 against individuals who participate in elections; and amending RCW
4 42.17A.750.

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

6 **Sec. 1.** RCW 42.17A.750 and 2019 c 428 s 37 are each amended to
7 read as follows:

8 (1) In addition to the penalties in subsection (2) of this
9 section, and any other remedies provided by law, one or more of the
10 following civil remedies and sanctions may be imposed by court order
11 in addition to any other remedies provided by law:

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

1 (b) If any lobbyist or sponsor of any grass roots lobbying
2 campaign violates any of the provisions of this chapter, the
3 lobbyist's or sponsor's registration may be revoked or suspended and
4 the lobbyist or sponsor may be enjoined from receiving compensation
5 or making expenditures for lobbying. The imposition of a sanction
6 shall not excuse the lobbyist from filing statements and reports
7 required by this chapter.

8 (c) A person who violates any of the provisions of this chapter
9 may be subject to a civil penalty of not more than ten thousand
10 dollars for each violation. However, a person or entity who violates
11 RCW 42.17A.405 may be subject to a civil penalty of ten thousand
12 dollars or three times the amount of the contribution illegally made
13 or accepted, whichever is greater.

14 (d) When assessing a civil penalty, the court may consider the
15 nature of the violation and any relevant circumstances, including the
16 following factors:

17 (i) The respondent's compliance history, including whether the
18 noncompliance was isolated or limited in nature, indicative of
19 systematic or ongoing problems, or part of a pattern of violations by
20 the respondent, resulted from a knowing or intentional effort to
21 conceal, deceive or mislead, or from collusive behavior, or in the
22 case of a political committee or other entity, part of a pattern of
23 violations by the respondent's officers, staff, principal decision
24 makers, consultants, or sponsoring organization;

25 (ii) The impact on the public, including whether the
26 noncompliance deprived the public of timely or accurate information
27 during a time-sensitive period or otherwise had a significant or
28 material impact on the public;

29 (iii) Experience with campaign finance law and procedures or the
30 financing, staffing, or size of the respondent's campaign or
31 organization;

32 (iv) The amount of financial activity by the respondent during
33 the statement period or election cycle;

34 (v) Whether the late or unreported activity was within three
35 times the contribution limit per election, including in proportion to
36 the total amount of expenditures by the respondent in the campaign or
37 statement period;

38 (vi) Whether the respondent or any person benefited politically
39 or economically from the noncompliance;

1 (vii) Whether there was a personal emergency or illness of the
2 respondent or member of the respondent's immediate family;

3 (viii) Whether other emergencies such as fire, flood, or utility
4 failure prevented filing;

5 (ix) Whether there was commission staff or equipment error,
6 including technical problems at the commission that prevented or
7 delayed electronic filing;

8 (x) The respondent's demonstrated good-faith uncertainty
9 concerning commission staff guidance or instructions;

10 (xi) Whether the respondent is a first-time filer;

11 (xii) Good faith efforts to comply, including consultation with
12 commission staff prior to initiation of enforcement action and
13 cooperation with commission staff during enforcement action and a
14 demonstrated wish to acknowledge and take responsibility for the
15 violation;

16 (xiii) Penalties imposed in factually similar cases; and

17 (xiv) Other factors relevant to the particular case.

18 (e) A person who fails to file a properly completed statement or
19 report within the time required by this chapter may be subject to a
20 civil penalty of ten dollars per day for each day each delinquency
21 continues.

22 (f) Each state agency director who knowingly fails to file
23 statements required by RCW 42.17A.635 shall be subject to personal
24 liability in the form of a civil penalty in the amount of one hundred
25 dollars per statement. These penalties are in addition to any other
26 civil remedies or sanctions imposed on the agency.

27 (g) A person who fails to report a contribution or expenditure as
28 required by this chapter may be subject to a civil penalty equivalent
29 to the amount not reported as required.

30 (h) Any state agency official, officer, or employee who is
31 responsible for or knowingly directs or expends public funds in
32 violation of RCW 42.17A.635 (2) or (3) may be subject to personal
33 liability in the form of a civil penalty in an amount that is at
34 least equivalent to the amount of public funds expended in the
35 violation.

36 (i) The court may enjoin any person to prevent the doing of any
37 act herein prohibited, or to compel the performance of any act
38 required herein. However, the attorney general may not seek sanctions
39 to enjoin any individual from participating in an election, including
40 but not limited to an election at which an initiative will be

1 presented to the voters, in any civil action brought by the attorney
2 general under this chapter.

3 (2) The commission may refer the following violations for
4 criminal prosecution:

5 (a) A person who, with actual malice, violates a provision of
6 this chapter is guilty of a misdemeanor under chapter 9.92 RCW;

7 (b) A person who, within a five-year period, with actual malice,
8 violates three or more provisions of this chapter is guilty of a
9 gross misdemeanor under chapter 9.92 RCW; and

10 (c) A person who, with actual malice, procures or offers any
11 false or forged document to be filed, registered, or recorded with
12 the commission under this chapter is guilty of a class C felony under
13 chapter 9.94A RCW.

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