

Stricken language would be deleted from and underlined language would be added to present law.
Act 737 of the Regular Session

State of Arkansas
93rd General Assembly
Regular Session, 2021

As Engrossed: H3/30/21 H4/1/21
A Bill

HOUSE BILL 1675

By: Representative Evans
By: Senator J. English

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING CAMPAIGN FINANCE;
TO REPEAL THE PROVISIONS CONCERNING CARRYOVER FUNDS;
TO MODIFY THE USE OF CAMPAIGN FUNDS; TO AMEND
PORTIONS OF INITIATED ACT 1 OF 1990 AND INITIATED ACT
1 OF 1996; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING CAMPAIGN
FINANCE; TO REPEAL THE PROVISIONS
CONCERNING CARRYOVER FUNDS; TO MODIFY THE
USE OF CAMPAIGN FUNDS; AND TO AMEND
PORTIONS OF INITIATED ACT 1 OF 1990 AND
INITIATED ACT 1 OF 1996.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 7-6-201(3), concerning the definition of "carryover funds" as applied to campaign financing and resulting from Initiated Act 1 of 1990 and Initiated Act 1 of 1996, is repealed.

~~(3)(A) "Carryover funds" means the amount of campaign funds retained from the last election by the candidate for future use but not to exceed the annual salary, excluding expense allowances, set by Arkansas law for the office sought.~~

~~(B) "Carryover funds" does not include campaign signs, campaign literature, and other printed campaign materials that were:~~

~~(i) Purchased by the campaign;~~



~~(ii) Reported on the appropriate contribution and expenditure report for the campaign at the time of the purchase; and~~
~~(iii) Retained for use in a future campaign by the same candidate;~~

SECTION 2. Arkansas Code § 7-6-201(17)(A), concerning the definition of "surplus campaign funds" as applied to campaign financing and resulting from Initiated Act 1 of 1990 and Initiated Act 1 of 1996, is amended to read as follows:

(17)(A) "~~Surplus~~ Remaining campaign funds" means any balance of campaign funds over expenses incurred as of the day of the election except for:

(i) ~~Carryover funds; and~~
~~(ii)~~ Any funds required to repay loans made by the candidate from his or her personal funds to the campaign; or
 (ii) ~~to~~ To repay loans made by financial institutions to the candidate and applied to the campaign.

SECTION 3. Arkansas Code § 7-6-203(f)(4)(A), concerning contribution, limitation, acceptance, use as personal income, and disposition of campaign funds and resulting from Initiated Act 1 of 1990 and Initiated Act 1 of 1996, is amended to read as follows:

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

(ii) Candidates or officeholders may use campaign funds ~~or carryover funds~~ to fulfill any commitment, obligation, or expense authorized by law, or permitted by an Arkansas Ethics Commission rule or opinion at the time of the expenditure, or reasonably and legitimately related to a campaign or officeholder activity.

SECTION 4. Arkansas Code § 7-6-203(f)(5), concerning contribution, limitation, acceptance, use as personal income, and disposition of campaign funds and resulting from Initiated Act 1 of 1990 and Initiated Act 1 of 1996,

is amended to read as follows:

(5) ~~If a candidate loses an election or if an officeholder is no longer in office, and after disposing of surplus funds, has carryover funds remaining,~~ personal use of campaign funds remains prohibited by this section ~~for expenses~~ unless the expenses relate to a future candidacy and shall comply with subdivision (f)(4) of this section.

SECTION 5. Arkansas Code § 7-6-203(f)(7), concerning contribution, limitation, acceptance, use as personal income, and disposition of campaign funds and resulting from Initiated Act 1 of 1990 and Initiated Act 1 of 1996, is amended to read as follows:

(7) It is an affirmative defense to a prosecution for taking campaign funds as personal income if the candidate or officeholder shows by a preponderance of the evidence that:

~~(A) If the personal property was retained as carryover~~ campaign funds, and the candidate or officeholder:

~~(i)(A)~~ Reported the personal property as ~~carryover~~ campaign funds; and

~~(ii)(B)~~ Retained or disposed of the personal property in the manner that is required by law for ~~carryover~~ campaign funds; ~~or~~

~~(B) If the personal property was retained as surplus funds, the candidate or officeholder:~~

~~(i) Reported the personal property as surplus funds;~~ ~~and~~

~~(ii) Retained or disposed of the personal property in the manner that is required by law for surplus funds.~~

SECTION 6. Arkansas Code § 7-6-203(g), concerning contribution, limitation, acceptance, use as personal income, and disposition of campaign funds and resulting from Initiated Act 1 of 1990 and Initiated Act 1 of 1996, is amended to read as follows:

(g)(1) ~~Within thirty (30) days following the end of the month in which an election is held or a candidate has withdrawn, a~~ A candidate ~~shall~~ may 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)(2)(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 Remaining campaign funds may be maintained after an election and used to run for election or re-election.~~

(B) Nothing shall prohibit a person at any time from

~~disposing of all or any portion of his or her carryover campaign funds in the same manner as for surplus campaign funds manner set out under subdivision (g)(1) of this section.~~ 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)(a) The carryover fund reports of a candidate for state or district office shall be filed with the Secretary of State.~~

~~(b) The carryover fund reports of a candidate for state or district office filed with the Secretary of State shall be filed in electronic form through the official website of the Secretary of State. The Arkansas Ethics Commission shall approve the format used by the Secretary of State for the filing of carryover fund reports in electronic form under this subdivision (g)(4)(C)(v)(b) to ensure that all required information is requested. The official website of the Secretary of State shall allow for searches of carryover fund report information required to be filed in electronic form under this subdivision (g)(4)(C)(v)(b).~~

~~(D)(i)(C)(i) Carryover Campaign 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 campaign funds shall be disposed of in the same manner as for surplus campaign funds manner set out under subdivision (g)(1) of this section.~~

(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)(g)(2)(C)~~ 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.

~~(E)(i)(D)(i) The use of carryover campaign funds to pay an elected candidate's own personal expenses for food, lodging, conference fees, or travel to attend a conference related to the performance of his or her responsibilities as an elected official shall not be considered a taking of campaign funds as personal income.~~

(ii) The reimbursement of expenses shall be a result of travel and the source of the reimbursement shall be authorized under the rules of the House of Representatives or the Senate and used to reimburse the ~~carryover~~ campaign account.

(iii) The reimbursement amount shall be reported in

the elected candidate's ~~carryover~~ campaign fund report.

~~(5)~~(3) 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)~~(4) ~~Surplus Campaign funds or remaining~~ 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 remaining campaign funds or carryover funds~~.

SECTION 7. Arkansas Code § 7-6-207(a)(1), concerning reports of contributions by candidates for state or district office and resulting from Initiated Act 1 of 1990 and Initiated Act 1 of 1996, is amended to add an additional subdivision to read as follows:

(F) If a candidate keeps remaining campaign funds after an election, the candidate shall continue filing the reports required by this subsection.

SECTION 8. Arkansas Code § 7-6-207(b)(1), concerning reports of contributions by candidates for state or district office and resulting from Initiated Act 1 of 1990 and Initiated Act 1 of 1996, is amended to add an additional subdivision to read as follows:

(H) The total amount of all nonitemized expenditures made during the filing period; ~~and~~

(I) A list of all disbursements made under § 7-6-203(g)(1); and

(J) The current balance of campaign funds.

SECTION 9. Arkansas Code § 7-6-207(b)(2), concerning reports of contributions by candidates for state or district office and resulting from Initiated Act 1 of 1990 and Initiated Act 1 of 1996, is amended to read as

follows:

(2)(A) ~~When the~~ If a candidate's campaign has ended and the candidate does not retain remaining campaign funds, the final report shall also indicate which option under § 7-6-203(g) was used to dispose of ~~any surplus of campaign funds, the amount of funds disposed of by the candidate, and.~~

(B) If a candidate's campaign has ended and the candidate is retaining remaining campaign funds, the final report shall also indicate the amount of funds retained by the candidate in accordance with § 7-6-201(3).

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

SECTION 10. Arkansas Code § 7-6-208(a), concerning reports of contributions by candidates for school district, township, or municipal office and resulting from Initiated Act 1 of 1990 and Initiated Act 1 of 1996, is amended to read as follows:

(a) Reports Required. Except as provided in subsection (d) of this section, each candidate for school district, township, or municipal office, or a person acting in the candidate's behalf, shall:

(1)(A) For each year in which a candidate is not listed on a ballot for election, file an annual report of all contributions received and expenditures made during that year.

(B) The annual report shall be filed no later than fifteen (15) days after the end of the year;

(2) No later than seven (7) days prior to any preferential primary election, runoff election, general election, school election, or special election in which the candidate's name appears on the ballot, file a preelection report of all contributions received and expenditures made between the period covered by the previous report, if any, and the period ten (10) days before the election. In case of a runoff election, the report shall cover all contributions received and expenditures made during that period of time that begins after the date of the election from which the runoff arose and ends ten (10) days before the runoff election;

~~(2)~~(3) No later than thirty (30) days after the end of the month in which the candidate's name has appeared on the ballot in any preferential primary election, runoff election, general election, school election, or special election, or when only one (1) candidate qualifies for a particular office or position and no position or name of an unopposed candidate shall appear on a ballot, file a final report of all contributions received and expenditures made that have not been disclosed on reports previously required to be filed. A final report is required regardless of whether a candidate has received contributions or made expenditures in excess of five hundred dollars (\$500);

~~(3)~~(4) File supplemental reports of all contributions received and expenditures made after the date of preparation of the final report. The supplemental reports shall be filed within thirty (30) days after the receipt of a contribution or the making of an expenditure; ~~and~~

~~(4)~~~~(A)~~(5)(A) No later than thirty (30) days after the end of the month in which the candidate has withdrawn, file a final report of all contributions received and expenditures made that have not been disclosed on reports previously required to be filed.

(B) If a candidate withdraws from the campaign, the candidate shall notify the county clerk in writing of the withdrawal; and

(6) If a candidate keeps remaining campaign funds after an election, the candidate shall continue filing the reports required by this subsection.

SECTION 11. Arkansas Code § 7-6-209(a), concerning reports of contributions by candidates for county office and resulting from Initiated Act 1 of 1990 and Initiated Act 1 of 1996, is amended to read as follows:

(a) Reports Required. Except as provided in subsection (d) of this section, each candidate for county office or a person acting in the candidate's behalf shall:

(1)(A) For each year in which a candidate is not listed on a ballot for election, file an annual report of all contributions received and expenditures made during that year.

(B) The annual report shall be filed no later than fifteen (15) days after the end of the year;

(2) No later than seven (7) days prior to any preferential

primary election, runoff election, general election, or special election in which the candidate's name appears on the ballot, file a preelection report of all contributions received and expenditures made between the period covered by the previous report, if any, and the period ten (10) days before the election. In case of a runoff election, the report shall cover all contributions received and expenditures made during that period of time that begins after the date of the election from which the runoff arose and ends ten (10) days before the runoff election;

~~(2)~~(3) No later than thirty (30) days after the end of the month in which the candidate's name has appeared on the ballot in any preferential primary election, runoff election, general election, or special election, or when only one (1) candidate qualifies for a particular office or position and no position or name of an unopposed candidate shall appear on a ballot, file a final report of all contributions received and expenditures made that have not been disclosed on reports previously required to be filed. A final report is required regardless of whether a candidate has received contributions or made expenditures in excess of five hundred dollars (\$500);

~~(3)~~(4) File supplemental reports of all contributions received and expenditures made after the date of preparation of the final report, and the supplemental reports shall be filed within thirty (30) days after the receipt of a contribution or the making of an expenditure; ~~and~~

~~(4)(A)~~(5)(A) No later than thirty (30) days after the end of the month in which the candidate has withdrawn, a final report of all contributions received and expenditures made that have not been disclosed on reports previously required to be filed.

(B) If a candidate withdraws from the campaign, the candidate shall notify the county clerk in writing of the withdrawal; and

(6) If a candidate keeps remaining campaign funds after an election, the candidate shall continue filing the reports required by this subsection.

/s/Evans

APPROVED: 4/16/21