

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 415

BY KING

AN ACT

1 RELATING TO POLITICAL EXPENDITURES BY CORPORATIONS; AMENDING SECTION 30-29-
2 140, IDAHO CODE, TO ADD A DEFINITION OF "POLITICAL EXPENDITURE" AND TO
3 MAKE TECHNICAL CORRECTIONS; AND AMENDING CHAPTER 29, TITLE 30, IDAHO
4 CODE, BY THE ADDITION OF A NEW SECTION 30-29-733, IDAHO CODE, TO PROVIDE
5 DEFINITIONS, TO REQUIRE SHAREHOLDER APPROVAL OF CERTAIN POLITICAL EX-
6 PENDITURES BY CORPORATIONS, TO PROVIDE FOR REPORTING REQUIREMENTS, TO
7 PROVIDE FOR ENFORCEMENT BY THE ATTORNEY GENERAL AND TO PROHIBIT A POLIT-
8 ICAL CONTRIBUTION UNDER CERTAIN CIRCUMSTANCES.
9

10 Be It Enacted by the Legislature of the State of Idaho:

11 SECTION 1. That Section 30-29-140, Idaho Code, be, and the same is
12 hereby amended to read as follows:

13 30-29-140. CHAPTER DEFINITIONS. As used in this chapter:

14 (1) "Articles of incorporation" means the original articles of incor-
15 poration, all amendments thereof, and any other documents permitted or re-
16 quired to be filed by a domestic business corporation with the secretary of
17 state under any provision of this chapter. If an amendment of the articles
18 or any document filed under this chapter restates the articles in their en-
19 tirety, thenceforth the "articles" shall not include any prior documents.

20 (2) "Authorized shares" means the shares of all classes a domestic or
21 foreign corporation is authorized to issue.

22 (3) "Conspicuous" means so written that a reasonable person against
23 whom the writing is to operate should have noticed it. For example, printing
24 in italics or boldface or contrasting color, or typing in capitals or under-
25 lined, is conspicuous.

26 (4) "Corporation," "domestic corporation" or "domestic business cor-
27 poration" means a corporation for profit that is not a foreign corporation,
28 incorporated under or subject to the provisions of this chapter.

29 (5) "Distribution" means a direct or indirect transfer of money or
30 other property, except its own shares, or incurrence of indebtedness by a
31 corporation to or for the benefit of its shareholders in respect of any of its
32 shares. A distribution may be in the form of a declaration or payment of a
33 dividend; a purchase, redemption, or other acquisition of shares; a distri-
34 bution of indebtedness; or otherwise.

35 (6) "Domestic unincorporated entity" means an unincorporated entity
36 whose internal affairs are governed by the laws of this state.

37 (7) "Electronic transmission" or "electronically transmitted" means
38 any process of communication not directly involving the physical transfer
39 of paper that is suitable for the retention, retrieval and reproduction in
40 written form of information by the recipient.

41 (8) "Eligible entity" means a domestic or foreign unincorporated en-
42 tity or a domestic or foreign nonprofit corporation.

- 1 (9) "Eligible interests" means interests or memberships.
- 2 (10) "Employee" includes an officer but not a director. A director may
3 accept duties that make him also an employee.
- 4 (11) The phrase "facts objectively ascertainable outside the plan or
5 filed document" is as set forth in section 30-29-120(2), Idaho Code.
- 6 (12) "Foreign corporation" means a corporation incorporated under a
7 law other than the law of this state which would be a business corporation if
8 incorporated under the laws of this state.
- 9 (13) "Foreign nonprofit corporation" means a corporation incorporated
10 under a law other than the law of this state, which would be a nonprofit cor-
11 poration if incorporated under the laws of this state.
- 12 (14) "Foreign unincorporated entity" means an unincorporated entity
13 whose internal affairs are governed by an organic law of a jurisdiction other
14 than this state.
- 15 (15) "Governmental subdivision" includes authority, county, district
16 and municipality.
- 17 (16) "Membership" means the right of a member in a domestic or foreign
18 nonprofit corporation.
- 19 (17) "Notice" is defined in section 30-29-141, Idaho Code.
- 20 (18) "Organic document" means a public organic document or a private or-
21 ganic document.
- 22 (19) "Owner liability" means personal liability for a debt, obligation
23 or liability of a domestic or foreign business or nonprofit corporation or
24 unincorporated entity that is imposed on a person:
- 25 (a) Solely by reason of the person's status as a shareholder, member or
26 interest holder; or
- 27 (b) By the articles of incorporation, bylaws or an organic document un-
28 der a provision of the organic law of an entity authorizing the articles
29 of incorporation, bylaws or an organic document to make one (1) or more
30 specified shareholders, members or interest holders liable in their ca-
31 pacity as shareholders, members or interest holders for all or speci-
32 fied debts, obligations or liabilities of the entity.
- 33 (20) "Political expenditure" means a payment, contribution, subscrip-
34 tion, distribution, loan, advance, deposit, gift of money, a transfer,
35 promise to pay, or exchange of anything of value for the purpose of assist-
36 ing, benefiting or honoring any public official or candidate or political
37 party, or assisting in furthering or opposing any election campaign.
- 38 (21) "Record date" means the date established under part 6 or 7 of this
39 chapter on which a corporation determines the identity of its shareholders
40 and their shareholdings for purposes of this chapter. The determinations
41 shall be made as of the close of business on the record date unless another
42 time for doing so is specified when the record date is fixed.
- 43 (21~~2~~) "Secretary" means the corporate officer to whom the board of
44 directors has delegated responsibility under section 30-29-840(3), Idaho
45 Code, for custody of the minutes of the meetings of the board of directors and
46 of the shareholders and for authenticating records of the corporation.
- 47 (22~~3~~) "Shareholder" means the person in whose name shares are regis-
48 tered in the records of a corporation or the beneficial owner of shares to the
49 extent of the rights granted by a nominee certificate on file with a corpo-
50 ration.

1 (234) "Shares" means the units into which the proprietary interests in a
2 corporation are divided.

3 (245) "Subscriber" means a person who subscribes for shares in a corpo-
4 ration, whether before or after incorporation.

5 (256) "Treasury shares" means shares of a corporation which have been
6 issued, have been subsequently acquired by and belong to the corporation,
7 and have not, either by reason of the acquisition or thereafter, been can-
8 celed or restored to the status of authorized but unissued shares. Treasury
9 shares shall be deemed to be "issued" shares, but not "outstanding" shares.

10 (267) "Unincorporated entity" means an organization or artificial le-
11 gal person that either has a separate legal existence or has the power to ac-
12 quire an estate in real property in its own name and that is not any of the
13 following: a domestic or foreign business or nonprofit corporation, an es-
14 tate, a trust, a state, the United States, or a foreign government. The term
15 includes, without limitation, a general partnership, limited liability com-
16 pany, limited partnership, business trust, joint stock association and in-
17 corporated nonprofit association.

18 (278) "United States" includes district, authority, bureau, commis-
19 sion, department and any other agency of the United States.

20 (289) "Voting group" means all shares of one (1) or more classes or se-
21 ries that under the articles of incorporation or this chapter are entitled
22 to vote and be counted together collectively on a matter at a meeting of
23 shareholders. All shares entitled by the articles of incorporation or this
24 chapter to vote generally on the matter are for that purpose a single voting
25 group.

26 (2930) "Voting power" means the current power to vote in the election of
27 directors.

28 SECTION 2. That Chapter 29, Title 30, Idaho Code, be, and the same is
29 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
30 ignated as Section 30-29-733, Idaho Code, and to read as follows:

31 30-29-733. CORPORATIONS -- POLITICAL EXPENDITURES -- SHAREHOLDER AP-
32 PROVAL. (1) Definitions. For the purposes of this section:

33 (a) "Corporation" shall mean a domestic or foreign business or non-
34 profit corporation.

35 (b) "Political expenditures" shall have the meaning set forth in sec-
36 tion 30-29-140, Idaho Code.

37 (c) Any other terms in this section which are not specifically defined
38 in this section or in section 30-29-140, Idaho Code, shall have the
39 meanings set forth in chapter 66, title 67, Idaho Code.

40 (2) A corporation may not use any money or other property of the corpo-
41 ration in connection with a political expenditure unless the shareholders of
42 the corporation, by an affirmative vote of a majority of all votes entitled
43 to be cast, have:

44 (a) Authorized in advance the total amount of money or property that may
45 be used for all political expenditures during a specific fiscal year of
46 the corporation; and

47 (b) Directed that the money or property be used for:

48 (i) A specified candidate or candidates;

49 (ii) Candidates of a specified political party or parties;

- 1 (iii) A specified political party or parties;
2 (iv) A specified political committee or committees;
3 (v) A specified entity or entities exempt from taxation under 26
4 U.S.C. 501(c); or
5 (vi) A specified measure or measures.
- 6 (3) Shareholder consideration of political expenditures shall occur at
7 an annual or special meeting of the shareholders.
- 8 (4) (a) Within forty-eight (48) hours after making a political expendi-
9 ture, the corporation shall:
- 10 (i) Give notice of the political expenditure by electronic trans-
11 mission to each shareholder that has requested notice; and
12 (ii) If the corporation maintains a website, post notice of the po-
13 litical expenditure on the website.
- 14 (b) The notice shall state the amount, recipient, date and purpose of
15 the political expenditure.
- 16 (5) The annual report of the corporation shall contain a list of all po-
17 litical expenditures made by the corporation during the reporting period,
18 including the amount, recipient, date and purpose of each political expendi-
19 ture.
- 20 (6) Whenever it appears to the attorney general that any person has en-
21 gaged in any act or practice constituting a violation of any provision of
22 this section, the attorney general may bring an action to obtain one (1) or
23 more of the following remedies:
- 24 (a) A temporary restraining order;
25 (b) A temporary or permanent injunction;
26 (c) A civil penalty not exceeding three (3) times the amount of a polit-
27 ical expenditure made in violation of subsection (2) of this section, or
28 five thousand dollars (\$5,000) for any other violation of this section;
29 (d) A declaratory judgment;
30 (e) Rescission;
31 (f) Restitution; and
32 (g) Any other appropriate relief.
- 33 (7) If a majority of the shareholders of the corporation are unable by
34 law, contract, policy, corporate bylaws or any other reason, to participate
35 in a vote regarding a political expenditure the corporation proposes to
36 make, the corporation may not make the political expenditure.