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AB-775 Contribution requirements: recurring contributions. (2021-2022)

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Assembly Bill No. 775

CHAPTER 942

An act to add Section 85701.5 to the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor September 30, 2022. Filed with Secretary of State September 30, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 775, Berman. Contribution requirements: recurring contributions.

The Political Reform Act of 1974 provides for the comprehensive regulation of campaign financing, including contribution limitations and requirements.

This bill would require a candidate or committee to obtain affirmative consent from a person making a recurring contribution at the time of the initial contribution, and would require any solicitation for a recurring contribution to be in a form that requires affirmative consent from the person making the contribution. The bill would make violation of these provisions subject to a fine of up to three times the aggregate amount of the subsequent recurring contributions received if certain specified conditions are met. This bill would also require a candidate or committee that accepts a recurring contribution to provide a receipt for each contribution, to provide information necessary to cancel the recurring contribution, and to immediately cancel a recurring contribution upon request. The bill would require a recurring contribution accepted in response to a solicitation that did not require affirmative consent or accepted after a contributor requested to cancel a recurring contribution to be returned within 14 days, as specified.

Existing law makes a knowing or willful violation of the Political Reform Act of 1974 a misdemeanor. By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a $\frac{2}{3}$ vote of each house of the Legislature and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 85701.5 is added to the Government Code, to read:

85701.5. (a) (1) A solicitation by a candidate or committee, directly or through an agent or intermediary, for a recurring contribution shall be in a form that requires affirmative consent from the person making the recurring contribution.

(2) A candidate or committee shall not accept a recurring contribution from a person unless the candidate or committee receives the affirmative consent of the person to make a recurring contribution at the time of the initial contribution.

(3) Passive action by the contributor, such as failing to uncheck a pre-checked box authorizing a recurring contribution, does not meet the requirement of affirmative consent under this subdivision.

(4) (A) A violation of this subdivision occurs each time a candidate or committee solicits a recurring contribution in a form that does not require affirmative consent or accepts an initial recurring contribution in response to a solicitation that was in a form that did not require affirmative consent from the contributor.

(B) A candidate or committee that accepts recurring contributions subsequent to an initial recurring contribution in response to a solicitation that was in a form that did not require affirmative consent from the contributor is liable for a fine not to exceed three times the aggregate amount of the subsequent recurring contributions received if all of the following are true:

(i) The candidate or committee knew or should have known that the solicitation required affirmative consent.

(ii) The candidate or committee knew or should have known that the contributor did not give affirmative consent for making the recurring contributions.

(iii) The recurring contributions, in the aggregate, exceed one thousand dollars (\$1,000).

(b) A candidate or committee that accepts a recurring contribution described in subdivision (a) shall do all of the following:

(1) Provide a receipt to the contributor that clearly and conspicuously discloses all terms of the recurring contribution within three days after the initial contribution is received and within three days after each recurring contribution is received.

(2) Provide all necessary information to cancel the recurring contribution in each communication with the contributor that concerns the contribution.

(3) Immediately cancel a recurring contribution upon request of the contributor.

(c) A recurring contribution accepted in response to a solicitation that did not require affirmative consent shall be returned to the contributor within 14 days of the earlier of receipt of a request from the contributor to return the contribution or the date on which the candidate or committee becomes aware that the solicitation of the recurring contribution was in violation of subdivision (a). A contribution accepted after a contributor requested to cancel a recurring contribution shall be returned to the contributor within 14 days of the request to cancel the recurring contribution.

(d) This section does not apply to a sponsored committee soliciting or accepting contributions from the sponsor's members, affiliates, employees, or shareholders.

(e) For purposes of this section, "recurring contribution" means a contribution from a person to a candidate or committee that is automatically charged to the person's bank account, credit card, or other payment account on a repeated basis, such as weekly or monthly, without approval or any other affirmative consent by the person after their initial contribution to the candidate or committee.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 3. The Legislature finds and declares that this bill furthers the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.