

2009 Bill 205

Second Session, 27th Legislature, 58 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 205

**ELECTION FINANCES AND CONTRIBUTIONS
DISCLOSURE (THIRD PARTY ADVERTISING)
AMENDMENT ACT, 2009**

MR. ANDERSON

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 205
Mr. Anderson

BILL 205

2009

ELECTION FINANCES AND CONTRIBUTIONS DISCLOSURE (THIRD PARTY ADVERTISING) AMENDMENT ACT, 2009

(Assented to _____, 2009)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Amends RSA 2000 cE-2

1 The *Election Finances and Contributions Disclosure Act* is amended by this Act.

2 Section 1(1) is amended

(a) by adding the following after clause (o):

(o.1) “third party” means third party as defined in Part 4.1;

(o.2) “third party election advertising” means third party
election advertising as defined in Part 4.1.

3 Section 4(1)(b) is amended by striking out “and” at the end of subclause (i), by adding “and” at the end of subclause (ii) and by adding the following after subclause (ii):

(iii) third parties that open and operate third party advertising
accounts under Part 4.1;

Explanatory Notes

1 Amends chapter E-2 of the Revised Statutes of Alberta 2000.

2 Definitions added.

3 Section 4(1) presently reads:

4(1) The Chief Electoral Officer, in addition to the Chief Electoral Officer's other powers and duties under this Act, the Election Act and the Senatorial Selection Act,

(a) may examine all financial statements required to be filed with the Chief Electoral Officer;

(b) may inquire into or conduct periodic investigations of the financial affairs and records of

4 Section 10 is amended

(a) by adding the following after subsection (4):

(4.1) If the chief financial officer of a third party operating a third party advertising account fails to file a third party election advertising report under section 39.10, the Chief Electoral Officer may cancel the registration of the third party.

(b) subsection (5) is amended by striking out “or candidate” wherever it occurs and substituting “, candidate or third party under Part 4.1”;

(c) subsection (6) is amended

(i) by striking out “or candidate” and substituting “, candidate or third party”,

(ii) by striking out “or” at the end of clause (b), by adding “or” at the end of clause (c) and by adding the following after clause (c):

(d) the third party, when the registration of that third party is cancelled.

(d) in subsections (7) and (8) by striking out “or candidate” and substituting “, candidate or third party”;

(e) in subsection (9)

(i) by striking out “or candidate” and substituting “, candidate or third party”,

- (i) *registered parties and constituency associations, and*
- (ii) *registered candidates in relation to election campaigns;*
- (c) *shall prescribe forms necessary for use under this Act and provide for their printing and distribution;*
- (d) *shall cause a statement setting out the amount of the expenses in total based on the financial statement submitted by each candidate pursuant to section 43 to be published on the website of the Chief Electoral Officer within 30 days after the date on which the financial statement is approved by the Chief Electoral Officer.*

4 Section 10 presently reads:

10(1) The Chief Electoral Officer may cancel the registration of

- (a) *a registered party on application by the registered party, or*
- (b) *a registered constituency association on application by the constituency association and the registered party concerned.*

(1.1) If after this subsection comes into force a registered party does not endorse a candidate in a general election, the Chief Electoral Officer shall cancel the registration of that party unless that registered party had endorsed a candidate at the most recent election under the Senatorial Selection Act.

(2) If

- (a) *a registered candidate who was nominated in accordance with the Election Act or the Senatorial Selection Act withdraws the candidate's candidacy in accordance with that Act, or*
- (b) *a person who becomes a registered candidate before becoming nominated in accordance with the Election Act or the Senatorial Selection Act does not in fact become so nominated,*

that person shall so notify the Chief Electoral Officer in writing and the Chief Electoral Officer shall cancel the registration of that person.

(3) If the chief financial officer of a registered party or registered constituency association fails to comply with section 42 or 43, the Chief Electoral Officer may cancel the registration of the registered party or constituency association, as the case may be.

(4) If a constituency association or a person acting for the constituency association accepts contributions in respect of an election under the

(ii) by striking out “or” at the end of clause (b), by adding “or” at the end of clause (c) and by adding the following after clause (c):

- (d) if the cancellation involves a third party, give written notification of the Chief Electoral Officer’s decision to the third party.

(f) by adding the following after subsection (12):

(13) When the registration of a third party is cancelled, all funds of the third party advertising account established pursuant to Part 4.1 not required to pay for third party election advertising expenses shall be paid over to the Chief Electoral Officer in trust for the third party, and if the third party does not become registered under Part 4.1 within a period of one year following the cancellation of the registration, the funds shall be paid into the General Revenue Fund.

Senatorial Selection Act, the Chief Electoral Officer may cancel the registration of the constituency association.

(5) If the Chief Electoral Officer is for any reason of the opinion that a registered party, constituency association or candidate

- (a) is no longer qualified to be registered, or*
- (b) obtained registration on the basis of an application that was false in any material particular,*

the Chief Electoral Officer may cancel the registration of the registered party, constituency association or candidate.

(6) If the Chief Electoral Officer cancels the registration of a political party, constituency association or candidate, the Chief Electoral Officer shall send written notice of the cancellation, together with the Chief Electoral Officer's reasons for the cancellation, by registered mail to

- (a) the political party, when the registration of that political party is cancelled,*
- (b) the constituency association and the political party concerned, when the registration of that constituency association is cancelled, or*
- (c) the candidate, when the registration of that candidate is cancelled,*

and the cancellation is effective on and after the 3rd day following the date of mailing the notice.

(7) A political party, constituency association or candidate notified under subsection (6) may, within 30 days after the mailing of the notice, request the Chief Electoral Officer in writing to review the cancellation.

(8) When the Chief Electoral Officer receives a written request under subsection (7), the Chief Electoral Officer shall, within 48 hours after that receipt, review the cancellation and give the political party, constituency association or candidate concerned an opportunity to make representations.

(9) Following the review of a cancellation, the Chief Electoral Officer may withdraw or confirm the cancellation of the registration of the political party, constituency association or candidate, as the case may be, and shall,

- (a) if the cancellation involves a political party, give written notification of the Chief Electoral Officer's decision to the political party,*
- (b) if the cancellation involves a constituency association, give written notification of the Chief Electoral Officer's decision to*

5 Section 16 is amended by striking out “or registered candidate” **and substituting** “registered candidate or third party for the purposes of third party election advertising under Part 4.1”.

6 Section 22 is amended in subsections (1) and (2) by striking out “or registered candidate” **wherever it occurs and substituting** “registered candidate or third party for the purposes of third party election advertising in Part 4.1”.

*the constituency association and the political party concerned,
or*

- (c) if the cancellation involves a candidate, give written notification of the Chief Electoral Officer's decision to the candidate.*

(10) When the registration of a political party is cancelled, the registration of the registered constituency associations of that political party is accordingly also cancelled and the Chief Electoral Officer shall forthwith give written notification of the cancellations to those constituency associations.

(11) When the registration of a political party or constituency association is cancelled for failure to comply with section 42 or 43, it may not again apply for registration until the financial statements required by section 42 or 43 that were not filed have been filed with the Chief Electoral Officer.

(12) When the registration of a political party, constituency association or candidate is cancelled, all funds of the political party, constituency association or candidate not required to pay the outstanding debts of the political party, constituency association or candidate shall be paid over to the Chief Electoral Officer and held by the Chief Electoral Officer in trust for the political party, constituency association or candidate and, if that political party, constituency association or candidate does not again become registered under this Act within a period of one year following cancellation of the registration, the funds shall be paid into the General Revenue Fund.

5 Section 16 presently reads:

16 No prohibited corporation, person normally resident outside Alberta or trade union or employee organization other than a trade union or employee organization as defined in this Act shall make any contributions to a registered party, registered constituency association or registered candidate.

6 Section 22 presently reads:

22(1) The value of contributions other than money provided to a registered party, registered constituency association or registered candidate is the market value of the contribution at that time.

(2) If any real or personal property is provided to a political party, constituency association or candidate registered under this Act for a price that is less than the market value at that time, the amount by which the value exceeds the price is a contribution for the purposes of this Act.

7 The following is added after section 39:

**Part 4.1
Third Party Advertising**

Definitions

39.1(1) In this Part,

- (a) “election period” means the period commencing the day a writ of election is issued for a general election and concluding at the end of polling day;
- (b) “political advertising” means advertising in any broadcast, print or electronic media including telephone, fax, internet, e-mail and text messaging with the purpose of promoting or opposing any registered party or the election of a candidate, for which there is or normally would be a charge, including advertising that takes a position on an issue with which a registered political party or candidate is associated, but does not include
 - (i) the publication without charge of news, an editorial, an editorial comment, an interview, a column, a letter, a debate, a speech or a commentary in a *bona fide* periodical publication, a radio or television program or a website or online discussion forum,
 - (ii) the distribution of a book, or the promotion of the sale of a book, for no less than its commercial value,
 - (iii) the transmission of a document in any form directly by a person or a group to their members, employees or shareholders or other persons who have given permission to the person or group to receive information from them, or
 - (iv) advertising by the Government in any form;
- (c) “third party election advertising” means political advertising that appears during an election period and is placed by a third party;
- (d) “third party advertising account” means the depository opened at a financial institution for the purpose of accepting third party election advertising contributions and for the payment of third party election advertising expenses;

7 New Part added concerning third party advertising.

- (e) “third party election advertising contribution” means an eligible contribution to a third party for the purposes of third party election advertising whether given before or after the third party becomes registered under section 39.2;
- (f) “third party election advertising expense” means an expense incurred by a third party in relation to third party election advertising;
- (g) “third party” means a person, including a trade union, employee organization, corporation and any other organization that would qualify for registration under section 39.2.

Registration requirement for third parties

39.2(1) A third party must apply for registration under this section when it has incurred or plans to incur expenses of \$1000 for third party election advertising expenses.

(2) An application for registration shall be sent to the Chief Electoral Officer in the prescribed form and shall include

- (a) the full name of the applicant and, in the case of an applicant organization that has a different usual name, this usual name and the abbreviation;
- (b) the full address of the applicant;
- (c) if the applicant is an organization,
 - (i) its address and telephone number, and
 - (ii) the name, address, telephone number and signature of the person with signing authority;
- (d) the address and telephone number of the place or places in Alberta where records of the applicant are maintained and of the place in Alberta where communications may be addressed;
- (e) in the case of an applicant organization, the names, addresses and telephone numbers of the principal officers of the organization or, if there are no principal officers, the principal members;

- (f) the name and address of the financial institution to be used by the third party for its third party advertising account;
- (g) the name, address and telephone number of the third party's chief financial officer responsible for the third party advertising account referred to in clause (f);
- (h) any additional information required by the Chief Electoral Officer concerning a third party advertising account.

(3) An application under subsection (2) must be signed by the individual or, in the case of an organization, by 2 principal officers of the organization or, if there are not principal officers, by 2 principal members of the organization.

(4) If the applicant is an entity with a governing body, the application shall include a copy of the resolution passed by the governing body authorizing the entity to establish a third party advertising account.

(5) The following shall not be registered under this section:

- (a) numbered corporations;
- (b) if the applicant is an organization, an organization that has not carried on business for one year prior to making its application;
- (c) if the applicant is an organization, an organization whose primary purpose is to engage in political advertising;
- (d) a registered charity within the meaning of section 248(1) of the *Income Tax Act* (Canada);
- (e) a candidate for election;
- (f) a registered political party;
- (g) a registered constituency association;
- (h) a member of Parliament;
- (i) a member of the Senate;
- (j) a member of the Legislative Assembly; or
- (k) a prohibited corporation.

- (6)** The Chief Electoral Officer shall without delay after receiving an application
- (a) determine whether the requirements set out in this section are met,
 - (b) notify the persons who signed the application whether the applicant is registered, and
 - (c) in the case of a refusal to register, give reasons for the refusal.
- (7)** The applicant must be resident in or, if the applicant is an organization, be registered or carrying on business in Alberta.
- (8)** A third party may not be registered if, in the opinion of the Chief Electoral Officer, the resemblance between its name, its different usual name or the abbreviation of its name and a name, abbreviation or nickname referred to in subsection (9) is so close that confusion is likely.
- (9)** Subsection (8) applies in respect of the name, abbreviation of the name or nickname
- (a) of a third party that is registered under this Act, or
 - (b) of a candidate, political party or political organization that is active anywhere in Canada.
- (10)** The registration of a third party ceases to be valid if the third party fails to file a third party election advertising report under section 39.10.
- (11)** The Chief Electoral Officer may cancel the registration of the third party on application by the third party.
- (12)** A third party may register prior to an election period.

Third party advertising accounts

39.3(1) A third party that is registered or required to register under section 39.2 must open a third party advertising account for the payment of all third party election advertising expenses and the receipt of all third party election advertising contributions.

(2) Contributions to a third party for third party election advertising must be identified as such and must go to the chief

financial officer for deposit in the third party advertising account.

(3) A third party may only open and operate one third party advertising account.

(4) Subject to the requirements of this Part, a third party that operates a third party advertising account may make contributions to other third party advertising accounts.

(5) All expenses related to third party election advertising must be paid from the third party's advertising account.

(6) A third party that registers outside of an election period may receive third party advertising contributions and make expenditures from the third party advertising account.

(7) All expenditures made by a third party from its third party advertising account must be recorded in its third party election advertising report whether or not the expenditures were made during the election period.

Limits on contributions

39.4(1) No person shall contribute an amount to third parties for third party election advertising exceeding

- (a) \$15 000 in any calendar year in which there is not a general election, or
- (b) \$30 000 in any calendar year in which there is a general election.

(2) No contribution may be made to a third party or used for third party election advertising unless the third party to whom the contribution is made is registered under section 39.2.

Identification of third parties

39.5(1) Every advertisement that is the subject of a third party election advertising expense must contain the name of the third party that sponsors the advertisement as registered with the Chief Electoral Officer and indicate that the third party authorizes the advertisement.

(2) The Chief Electoral Officer may establish rules for the content of notices in advertisements under subsection (1).

Registry of third parties

39.6 The Chief Electoral Officer shall maintain a registry of third parties in which is recorded, in relation to each third party, the information referred to in section 39.2(2)(a)(b)(c) and (g).

Duty of chief financial officer

39.7(1) Every third party that is registered under section 39.2 must appoint a chief financial officer.

(2) Every contribution that is made to a third party advertising account shall be accepted by its chief financial officer if it is made for the purpose of third party election advertising.

(3) Every third party election advertising expense that is incurred by or on behalf of a registered third party shall be authorized by its chief financial officer.

(4) The chief financial officer may delegate a function described in subsection (2) or (3) to another person, but the delegation does not limit the chief financial officer's responsibility.

Prohibition, use of certain contributions

39.8(1) The following shall not make contributions to a third party for third party election advertising:

- (a) if the contributor is an organization, an organization that has not carried on business in the province of Alberta for one year prior to making the contribution;
- (b) if the contributor is an organization, an organization whose primary purpose is to engage in political advertising;
- (c) a registered charity within the meaning of section 248(1) of the *Income Tax Act* (Canada);
- (d) a candidate for election;
- (e) a registered political party;
- (f) a registered constituency association;
- (g) a member of Parliament;
- (h) a member of the Senate;
- (i) a sitting member of the Legislative Assembly; or

(j) a prohibited corporation.

(2) A third party that collects periodic dues, assessments or initiation fees for its members may consider each individual payment as a separate third party election advertising contribution to the third party's advertising account where the payment is not related to the employment of an individual or to fees associated with membership in a professional association.

(3) No third party shall use a contribution for the purpose of third party election advertising if the third party does not know the name and address of the contributor.

(4) Any contribution to a third party for the purpose of third party election advertising made through an unincorporated association or organization shall be recorded by the unincorporated association or organization as to the individual sources and amounts making up the contribution.

(5) No third party shall use a contribution that was made by an entity that is ineligible to contribute under this section and must return such contribution immediately.

(6) Contributions to a third party for third party election advertising must only be made by

- (a) individuals that are ordinarily resident in Alberta, or
- (b) organizations that are registered or are carrying on business in Alberta.

How contributions of money to be made

39.9(1) Contributions of money to third parties registered under this Part in amounts in excess of \$375 for the purpose of third party election advertising shall be made only by

- (a) a cheque having the name of the contributor legibly printed thereon and drawn on an account in the contributor's name;
- (b) a money order signed by the contributor;
- (c) in the case of money contributed by an individual, the use of a credit card having the name of the individual contributor imprinted or embossed thereon; or
- (d) by electronic funds transfer where the identity of the contributor can be determined.

(2) All money contributed for the purpose of third party election advertising and accepted by or on behalf of a third party registered under this Part must be paid into the appropriate third party advertising account on record with the Chief Electoral Officer.

Third party election advertising report

39.10(1) The chief financial officer of every third party that is required to be registered under this Part must file a third party election advertising report in the prescribed form with the Chief Electoral Officer within 6 months of polling day.

(2) The chief financial officer of a third party that receives third party election advertising contributions or pays any expenses from its third party advertising account outside of the report period in subsection (1) must file a third party election advertising report with the Chief Electoral Officer on or before March 31 of each year for the preceding calendar year.

(3) If a third party that is registered has not incurred advertising expenses, that fact shall be indicated in its third party election advertising report.

(4) The third party election advertising report shall include

- (a) the amount of contributions for third party election advertising purposes that were received during the year,
- (b) for each contributor who made contributions of a total amount of more than \$375 for third party election advertising purposes during the period referred to in clause (a), their name and address and the amount and date of each contribution,
- (c) a financial statement setting out income and transfers and the amount of expenses in total, and
- (d) the time and place of broadcast or publication of the advertisements to which the expenses relate.

(5) A chief financial officer shall, at the request of the Chief Electoral Officer, provide the original of any bill, voucher or receipt in relation to a third party election advertising expense that is in an amount of more than \$50.

(6) When the price charged a third party for third party election advertising is nil, reduced or at less than a fair market rate, the

expense must be calculated at the fair market rate and the difference calculated as a contribution under this Part by the vendor.

(7) The third party election advertising report must include the fair market rate for advertising expenses to which subsection (6) applies.

Audited financial statements

39.11(1) The chief financial officer of a third party whose third party election advertising expenses are \$100 000 or more must file an audited financial statement with the Chief Electoral Officer 6 months after polling day.

(2) The Chief Electoral Officer may determine what information is to be provided in the audited financial statement required under subsection (1).

8 Section 48 is amended by adding the following after subsection (1):

(1.1) The chief financial officer of a third party that operates a third party advertising account who contravenes section 39.10 is guilty of an offence and liable to a fine of \$10 000.

9 The following is added after section 49:

Third party election advertising offences

49.1 A third party that contravenes Part 4.1 of this Act is guilty of an offence and liable to a fine of

- (a) \$10 000 if the third party is an individual;
- (b) \$100 000 if it is a trade union, employee organization, corporation or other organization.

8 Section 48 presently reads:

48(1) The chief financial officer of a registered party, registered constituency association or registered candidate who contravenes section 42 or 43 is guilty of an offence and liable to a fine of not more than \$1000.

(2) When any contravention of section 42 or 43 is committed by a chief financial officer of a registered party, registered constituency association or registered candidate, the political party or constituency association or candidate for which the chief financial officer acts is also guilty of an offence and liable,

(a) in the case of a registered party, to a fine of not more than \$5000, and

(b) in the case of a registered constituency association or registered candidate, to a fine of not more than \$1000.

9 Political advertising offences.

10 This Act comes into force on Proclamation.

10 Coming into force.

