A BILL FOR AN ACT

CONCERNING THE NONAPPLICABILITY OF DISCLOSURE REQUIREMENTS UNDER COLORADO LAW GOVERNING CAMPAIGN FINANCE IN THE CASE OF CERTAIN ISSUE COMMITTEES THAT RAISE RELATIVELY SMALL AMOUNTS OF MONEY.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://www.leg.state.co.us/billsummaries.)

In a recent decision handed down by the federal district court for Colorado, the federal court held that the disclosure and registration requirements imposed upon issue committees under the Colorado
constitution and the state "Fair Campaign Practices Act" (FCPA) were not to be applied to an advocacy organization that raised a relatively small amount of money to promote its issue advocacy, and further enjoined the secretary of state from enforcing the FCPA disclosure requirements against the organization.

In light of this order, section 2 of the bill prohibits the application of the disclosure or reporting requirements specified in the FCPA to an issue committee unless and until the issue committee has accepted or made contributions or expenditures in excess of $5,000. The bill requires an issue committee that accepts or makes contributions or expenditures in excess of $5,000 to register with the appropriate officer within 10 calendar days of accepting or making such contributions and expenditures and to report all contributions received and expenditures made after reaching the $5,000 threshold in accordance with the reporting schedule specified in the FCPA.

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Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly finds, determines, and declares that:

   (a) In 2002, the voters of the state passed article XXVIII of the state constitution, which imposed a comprehensive regulatory scheme governing campaign finance. Article XXVIII, among other things, defined "issue committee" to mean "any person, other than a natural person, or any group of two or more persons, including natural persons: (I) That has a major purpose of supporting or opposing any ballot issue or ballot question; or (II) that has accepted or made contributions or expenditures in excess of two hundred dollars to support or oppose any ballot issue or ballot question." This latter requirement triggers a legal obligation on the part of the issue committee to report and disclose their contributions and expenditures.

   (b) In the case of Sampson v. Buescher, 625 F.3d 1247 (10th Circuit 2010), the United States court of appeals for the tenth circuit addressed a constitutional challenge to the threshold disclosure
requirement brought by a group of citizens who had raised less than $1,000 in monetary and in-kind contributions to oppose a local annexation measure, but failed to register as an issue committee. The tenth circuit held that the threshold disclosure requirement as applied to plaintiffs unconstitutionally burdened their first amendment right to association. The court held that the financial burden of state regulation on plaintiffs' freedom of association approaches or exceeds the value of their political effort; and the governmental interest in imposing those regulations is minimal, if not nonexistent, in light of the small size of their contributions. In the Sampson case, the court did not draw a bright-line below which an issue committee cannot be required to report contributions and expenditures. The court noted that the case before it "is quite unlike ones involving the expenditure of tens of millions of dollars on ballot issues presenting 'complex policy proposals.' We say only that Plaintiffs' contribution and expenditures are well below the line".

(c) In the wake of Sampson v. Buescher, the Colorado secretary of state (secretary) promulgated an administrative rule, rule 4.1, that increased the contribution and expenditure threshold that triggers issue committee status from $200 to $5,000 and exempted retrospective reporting of contributions and expenditures once issue committee status is achieved.

(d) A challenge to rule 4.1 was brought in Denver district court on the grounds that the secretary exceeded his rule-making authority by promulgating rule 4.1. The case ultimately reached the Colorado supreme court, which held, in Gessler v. Colorado Common Cause, 2012 CO 44, that the reporting and disclosure requirements at issue were not facially invalidated by Sampson v. Buescher. Because the rule directly conflicts
with these still-valid constitutional and statutory provisions, the supreme court found rule 4.1 unlawful and set it aside.

(e) A subsequent lawsuit was filed in federal district court challenging the application of these reporting and disclosure requirements to a small think tank and advocacy organization, Coalition for Secular Government (CSG), that was uncertain whether its combined contributions (reaching an expected amount of $3,500 in 2014) required it to register as an issue committee. In that case, *Coalition for Secular Gov't v. Gessler*, United States district court, Case No. 12 CV 1708, the federal court found that CSG fell outside the scope of issue committees to which Colorado's campaign finance disclosure laws may constitutionally apply. The federal court stated, "The nature of CSG and its advocacy render any 'informational interest' the government has in mandating contribution and expenditure disclosures so minimal as to be nonexistent, and certainly insufficient to justify the burdens compliance imposes on members' constitutional free speech and association rights". The federal court further stated that "having to adjudicate it in every instance as the Colorado Supreme Court [in *Gessler v. Colo. Common Cause*, 2014 CO 44] implies is necessary itself offends the First Amendment. By setting in stone the uncertainty that precipitated this litigation in the first place, the Court's interpretation chills robust discussion at the very core of our electoral process".

(f) In *Coalition for Secular Gov't v. Gessler*, the federal court ordered and declared that CSG's expected activity of $3,500 does not require registration or disclosure as an issue committee and further enjoined the secretary from enforcing the "Fair Campaign Practice Act" disclosure requirements against it. The court additionally awarded CSG...
its attorney fees and "advise[d] state lawmakers that the Secretary will be on the hook for fees every time a group, like CSG, falls under the $200 trigger for issue committee status and has to sue to vindicate its First Amendment rights".

(2) By enacting Senate Bill 15-___, the general assembly intends to follow and effectuate the holding and order of the United States district court for Colorado by precluding the applicability of campaign finance reporting, disclosure, and reporting requirements to issue committees that raise or expend relatively small amounts of money to advocate for their objectives. In this way, the state will be protecting the first amendment associational rights of these organizations; provide a bright-line standard so these entities will know the legal requirements that apply to them and not have to guess whether their activities require compliance with the reporting and disclosure requirements, thereby minimizing any chilling of robust discussion at the heart of our electoral process; and save the state the considerable amount of money in attorney fees that it will be paying out to similar organizations in the future suing the state to vindicate their first amendment rights.

SECTION 2. In Colorado Revised Statutes, 1-45-108, **amend** (1) (a) (I), (1) (a) (II), (3.3), and (6); and **add** (1.5) as follows:

1-45-108. Disclosure - definition. (1) (a) (I) **SUBJECT TO** SUBSECTION (1.5) OF THIS SECTION, all candidate committees, political committees, issue committees, small donor committees, and political parties shall report to the appropriate officer their contributions received, including the name and address of each person who has contributed twenty dollars or more; expenditures made, and obligations entered into by the committee or party.
(II) SUBJECT TO SUBSECTION (1.5) OF THIS SECTION, in the case of contributions made to a candidate committee, political committee, issue committee, and political party, the disclosure required by this section shall also include the occupation and employer of each person who has made a contribution of one hundred dollars or more to such committee or party.

(1.5) (a) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IN LIGHT OF THE ORDER OF THE FEDERAL DISTRICT COURT IN THE CASE OF COALITION FOR SECULAR GOV’T V. GESSLER, CASE NO. 12 CV 1708, THE DISCLOSURE REQUIREMENTS SPECIFIED IN SUBPARAGRAPH (I) OR (II) OF PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION AND THE REPORTING REQUIREMENTS SPECIFIED IN SUBSECTION (3.3) OR (6) OF THIS SECTION SHALL NOT APPLY TO AGAINST AN ISSUE COMMITTEE UNLESS AND UNTIL THE ISSUE COMMITTEE HAS ACCEPTED OR MADE CONTRIBUTIONS OR EXPENDITURES IN EXCESS OF FIVE THOUSAND DOLLARS.

(b) AN ISSUE COMMITTEE THAT ACCEPTS OR MAKES CONTRIBUTIONS OR EXPENDITURES IN EXCESS OF FIVE THOUSAND DOLLARS SHALL REGISTER WITH THE APPROPRIATE OFFICER WITHIN TEN CALENDAR DAYS OF ACCEPTING OR MAKING SUCH CONTRIBUTIONS AND EXPENDITURES AND REPORT ALL CONTRIBUTIONS RECEIVED AND EXPENDITURES MADE AFTER REACHING THE FIVE THOUSAND DOLLAR THRESHOLD IN ACCORDANCE WITH THE REPORTING SCHEDULE SPECIFIED IN PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION.

(3.3) Subject to the provisions of subsection (7) of this section, each issue committee shall register with the appropriate officer within ten calendar days of accepting or making contributions or expenditures in excess of two hundred dollars to support or oppose any ballot issue or ballot question or upon receipt of the notice
from the secretary of state pursuant to section 1-40-113 (1) (b). If required to register under the requirements of this subsection (3.3), the registration of the issue committee shall include a statement containing the items listed in paragraphs (a) to (e) of subsection (3) of this section in connection with other committees and a political party.

(6) SUBJECT TO SUBSECTION (1.5) OF THIS SECTION, any issue committee whose purpose is the recall of any elected official shall register with the appropriate officer within ten calendar days of accepting or making contributions or expenditures in excess of two hundred dollars to support or oppose the recall. Reports of contributions and expenditures shall be filed with the appropriate officer within fifteen days of the filing of the committee registration and every thirty days thereafter until the date of the recall election has been established and then fourteen days and seven days before the recall election and thirty days following the recall election.

SECTION 3. Applicability. This act applies to the portion of any election cycle or for the portion of the calendar year remaining after the effective date of this act and for any election cycle or calendar year commencing after such effective date, whichever is applicable.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.