

Date of Hearing: April 10, 2019

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 864 (Mullin) – As Amended April 3, 2019

SUBJECT: Political Reform Act of 1974: disclosures.

SUMMARY: Makes numerous substantive and technical changes to the Disclose Act and other provisions of state law governing the content and format of disclosure statements that are required to appear on communications disseminated by candidates and committees. Specifically, **this bill:**

- 1) Requires a mass mailing that is a print advertisement under the Disclose Act to include the name, address, and city of the committee on the outside of each piece of mail and on at least one of the inserts, as specified, in addition to the disclosure required by the Disclose Act.
- 2) Requires political party committees and candidates' own controlled committees, which generally were exempted from the requirements of the Disclose Act, to comply with the requirements of the Disclose Act for electronic media advertisements, including mass electronic mailings that are advertisements under the Political Reform Act (PRA).
- 3) Revises the PRA's rules governing disclosures on telephone calls as follows:
 - a) Reduces, from 500 to 200, the number of substantially similar phone calls made by a political party committee, candidate's own controlled committee, or slate mailer organization, as specified, that trigger a requirement for the calls to include a disclosure of the name of the organization that paid for or authorized the calls, as specified.
 - b) Deletes the requirement that advertisements that are telephone calls and that are subject to the Disclose Act must comply with the same disclosure and formatting requirements that apply to radio advertisements, and instead requires a committee that makes 200 or more substantially similar telephone calls that support or oppose a candidate or ballot measure, as specified, to include the name of the committee that authorized or paid for the call and the top two contributors to the committee that paid for the call, as specified.
 - c) Requires prerecorded telephone calls that are subject to the requirements detailed above to include the required disclosures in a clearly spoken manner and in a pitch and tone substantially similar to the rest of the call.
- 4) Expands, from five to eight seconds, the amount of time that disclosures required by the Disclose Act must appear on screen for a video advertisement of 30 seconds or less in situations where a specified disclosure on the advertisement takes up more than two lines.
- 5) Requires a disclaimer that an advertisement is an independent expenditure, when required to appear on a video advertisement that is required to include Disclose Act disclosures, to appear above rather than inside the disclosure box required by the Disclose Act. Prohibits any information from appearing in the disclosure area required by the Disclose Act on a video advertisement other than the information required by the Disclose Act or a local law.

- 6) Requires a text message that is an advertisement for the purposes of the Disclose Act to include specified information about the identity of the candidate or committee that is paying for the advertisement. Requires, in the case of a text message sent by a committee that generally is required to include a disclosure of the committee's top contributors on advertisements pursuant to the Disclose Act, that the text message include a listing of the top contributors or a hyperlink to a website containing that information, as specified.
- 7) Permits the FPPC to impose treble damages for non-intentional violations of the formatting and display requirements of the Disclose Act if the FPPC receives a report that an advertisement possibly violates those requirements, the FPPC notifies the person responsible for the possible violation that the report has been received, and the person does not address the possible violation within five days, as specified.
- 8) Makes minor, corresponding, technical, and clarifying changes, including the following:
 - a) Clarifies, for the purposes of the disclosure requirements that the PRA imposes on mass mailings, that both mass mailings and mass electronic mailings that are sent by a controlled committee must include the name of the person controlling the committee.
 - b) Clarifies that the term "mass electronic mailing," for the purposes of the PRA, does not include a communication that was solicited by the recipient, as specified.
 - c) Specifies that a provision of law that exempts electronic communications to recipients who opted-in to those communications from the disclosure requirements of the Disclose Act does not apply to a customer who opted-in to receiving communications from a provider of goods or services, unless the customer provided express approval to receive political messages from the provider.
 - d) Clarifies that when a committee makes an earmarked contribution, as specified, the committee must provide specified information about the occupation and employer of the contributor who earmarked the contribution to the committee that receives the earmarked contribution, in addition to providing the name and address of the contributor who earmarked the contribution.
 - e) Clarifies that electronic media advertisements that are graphics or images, as specified, are not required to include a disclosure of the top contributors to the committee paying for the advertisement in the graphic or image itself, because that information is disclosed on a linked internet website.
 - f) Clarifies and recasts the provisions of law that describe the size and formatting requirements for print advertisements such as billboards and yard signs that are larger than those designed to be individually distributed.
 - g) Clarifies the disclosure requirements that apply to electronic media advertisements that are paid for by a political party committee or a candidate controlled committee established for an elective office of the controlling candidate.
 - h) Clarifies various requirements for "online platform disclosed advertisements," for the purposes of a provision of law that will require online platforms that sell political ads,

beginning on January 1, 2020, to make specified information about those political ads available to the public, as specified.

- i) Provides that a specified disclaimer that must otherwise appear continuously in a television or video advertisement is not required to appear when Disclose Act disclosures are on the screen, in order to avoid having multiple disclosures and disclaimers cluttering the screen at the same time.

EXISTING LAW:

- 1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the PRA.
- 2) Requires specified mass mailings and mass electronic mailings to include identifying information about the candidate or committee sending the mailing or electronic mailing, as specified.
- 3) Prohibits candidates, specified committees, and slate mailer organizations from expending campaign funds, as specified, to pay for 500 or more similar telephone calls that support or oppose a candidate or ballot measure unless the call includes a disclosure of the name of the candidate, committee, or slate mailer organization that authorized or paid for the call, as specified.
- 4) Defines "advertisement," for the purposes of the PRA, as any general or public communication that is authorized and paid for by a committee for the purpose of supporting or opposing a candidate or a ballot measure, except as specified.
- 5) Requires advertisements that support or oppose candidates or ballot measures to include disclosure statements in specified circumstances. These required statements may include a disclosure of the committee that is paying for the advertisement, a disclosure of the top contributors to the committee paying for the advertisement, as specified, and a statement (in the case of an independent expenditure supporting or opposing a candidate) that the advertisement was not authorized by a candidate or a committee controlled by a candidate for that office.
- 6) Requires disclosure statements that are required to appear in advertisements pursuant to the PRA to comply with certain formatting, display, legibility, and audibility requirements.
- 7) Provides that a person who violates specified requirements for advertisements to include disclosure statements, in addition to specified remedies generally available under the PRA, is liable in a civil or administrative action for a fine of up to three times the cost of the advertisement, including placement costs, as specified. Provides that a person who *intentionally* violates specified other requirements governing the formatting and display requirements of disclosure statements for the purpose of avoiding disclosure, in addition to specified remedies generally available under the PRA, is liable in a civil or administrative action for a fine of up to three times the cost of the advertisement, including placement costs, as specified.

FISCAL EFFECT: Unknown. State-mandated local program; contains a crimes and infractions disclaimer.

COMMENTS:

1) **Purpose of the Bill:** According to the author:

Campaign spending on ballot measures has reached unprecedented levels. Over \$1 billion has been spent in California on ballot measures since 2014, much on ads that try to hide the true identities of top donors to campaign ads behind misleading names or by making them difficult to read. Hundreds of millions of dollars more was spent on independent expenditures supporting or attacking candidates.

AB 249 allowed voters to much more easily see the top 3 funders of ballot measure and independent expenditure ads. E.g., ads on TV are now required to show disclosures for 5 seconds on a solid black background on the bottom 1/3 of the screen, with each of their top 3 funders listed on separate lines.

AB 2188 extended disclosure requirements to “online platform disclosed advertisements” on online platforms like Facebook, Twitter, and Google. It required political advertisers to notify online platforms of necessary information when they place paid ads, including their disclosure name and top 3 funders (if applicable), and also required the online platforms to disclose that information on the ads.

Since AB 249's and AB 2188's passage, the FPPC and stakeholders have raised a number of small issues that need further clarification by the Legislature, including requests for greater consistency.

Also, complaints from voters about some of the disclosures in the 2018 election shows the need for additional reasonable rules to ensure that AB 249's original intent to allow voters to easily read the top 3 funders on ads is fulfilled.

2) **Disclose Act, Previous Legislation, and Suggested Amendments:** Two years ago, the Legislature approved and the Governor signed AB 249 (Mullin), Chapter 546, Statutes of 2017, which significantly changed the content and format of disclosure statements required on specified campaign advertisements in a manner that generally required such disclosures to be more prominent. AB 249 also established new requirements for determining when contributions are considered to be earmarked, and imposed new disclosure requirements for earmarked contributions to ensure that committees are able to determine which contributors must be listed on campaign advertisements. AB 249 is commonly known as the "Disclose Act." The passage of AB 249 marked the culmination of seven years of debate and negotiation over similar legislation. AB 249 took effect on January 1, 2018.

Last year, the Legislature approved and the Governor signed AB 2155 (Mullin), Chapter 777, Statutes of 2018, which made various changes to the Disclose Act that generally were minor, clarifying, or technical in nature, or otherwise were consistent with disclosure examples that were provided by supporters when AB 249 was being considered by the Legislature. Also enacted last year was AB 2188 (Mullin), Chapter 754, Statutes of 2018, which requires online platforms that sell political ads to make specified information about those political ads available to the public, and makes various changes to the required format for disclosures on

electronic media ads that are required by existing law. AB 2188 is known as the “Social Media Disclose Act.” Although AB 2188 was signed into law last year, it had a delayed implementation date, and it does not take effect until January 1, 2020.

This bill also proposes a number of changes to the Disclose Act and related provisions. While some of the changes proposed by this bill are minor or clarifying in nature, this bill also includes substantial substantive changes to provisions of the Disclose Act that, in some cases, are inconsistent with negotiated compromises that helped facilitate the passage of the Disclose Act.

Notwithstanding the approval of AB 2155 last year, which was intended to be a clean-up measure for the Disclose Act, FPPC staff has indicated that there are several additional clean-up items that they believe are necessary in order for the Disclose Act to be clearly and efficiently administered. Additionally, FPPC staff has indicated that they believe clean-up is necessary to last year’s AB 2188. Some of the clean-up provisions that FPPC staff has sought are in this bill, though FPPC staff has indicated that they believe further changes are needed.

Given the substantial changes that California has made over the last two years to the rules governing disclosures that must appear on campaign advertisements, individuals and entities that have to comply with and enforce those rules have faced considerable change in and uncertainty about the state of the law over the last two years. That is especially true in light of the fact that the entity responsible for enforcing the law—the FPPC—believes that additional clean-up is necessary for the Disclose Act to be properly understood and enforced.

In light of the foregoing information, the author and the committee may wish to consider whether it is prudent to consider the further significant, substantive changes to the provisions of the Disclose Act and the Social Media Disclose Act that are proposed in this legislation. Instead, it may be appropriate to focus on the minor and technical clean-up items that are necessary to ensure that the Disclose Act and the Social Media Disclose Act can be implemented and administered effectively. Once the technical issues with those laws have been resolved, and the public and other stakeholders have experience in seeing how the disclosure requirements work in practice, the Legislature will be in a better position to evaluate the effectiveness of those laws, and to determine whether further substantive policy changes are warranted.

Accordingly, the author and the committee may wish to consider amending this bill to remove the substantive changes that it proposes, and instead to focus on the minor, technical, and clarifying changes that are detailed above in item #8 of the summary of this bill.

- 3) **Text Message Disclosures and Related Legislation:** Existing law generally requires electronic media advertisements—including text messages—to include a disclosure identifying the name of the committee that paid for the advertisement and the top contributors to that committee, as specified, except in situations where the advertisement is paid for by a candidate’s own controlled committee or a political party committee. As noted above, AB 2188, which was approved by the Legislature last year but which does not take effect until 2020, made various changes to the required format for disclosures on electronic media ads. None of the disclosure requirements in AB 2188, however, cover text messages that are political advertisements. As a result, when AB 2188 takes effect and its provisions replace the current rules that apply to electronic media advertisements, political text

messages will no longer be required to include disclosures under state law.

Among other provisions, this bill would require political text message advertisements to include specified information about the identity of the candidate or committee that is paying for the advertisement. AB 201 (Cervantes), which also is being heard in this committee today, similarly would require text messages that support or oppose a candidate or ballot measure to include a disclosure of the name of the candidate or committee that paid for the text message.

- 4) **Arguments in Support:** In support of this bill, the League of Women Voters of California writes:

We believe that methods of financing political campaigns should enhance political equality, ensure maximum participation in the political process, protect representative democracy from being distorted by big spending in election campaigns, provide voters sufficient information about candidates and campaign issues to make informed choices, and ensure transparency and the public's right to know who is using money to influence elections.

AB 864 offers a number of technical clarifications of AB 249 and AB 2188 requested by the California's Fair Political Practices Commission. In addition, it makes several modest substantive changes to provide greater clarity and consistency in the laws and to better fulfill their original intent.

- 5) **Related Legislation:** AB 1217 (Mullin), which is pending in this committee, requires certain advertisements that are issue ads or electioneering communications to include disclosure statements identifying the entity responsible for the advertisements and the major funders of that entity, as specified.
- 6) **Political Reform Act of 1974:** California voters passed an initiative, Proposition 9, in 1974 that created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders, and lobbyists. That initiative is commonly known as the PRA. Amendments to the PRA that are not submitted to the voters, such as those contained in this bill, must further the purposes of the initiative and require a two-thirds vote of both houses of the Legislature.

REGISTERED SUPPORT / OPPOSITION:

Support

League of Women Voters of California

Opposition

None on file.

Analysis Prepared by: Ethan Jones / E. & R. / (916) 319-2094