

Date of Hearing: March 23, 2022

ASSEMBLY COMMITTEE ON ELECTIONS  
Isaac G. Bryan, Chair  
AB 1798 (Bryan) – As Introduced February 7, 2022

**SUBJECT:** Campaign disclosure: advertisements.

**SUMMARY:** Allows a campaign advertisement that is an electronic media advertisement to include required disclosures directly on the advertisement itself, as an alternative to linking to an internet website that contains the disclosures. Specifically, **this bill**

- 1) Permits an electronic media advertisement that is a graphic, image, animated graphic, or animated image that the online platform hosting the advertisement allows to link to an internet website paid for by a committee the option to include required disclosures by either of the following methods:
  - a) Including the text, “Who funded this ad?,” “Paid for by,” or “Ad Paid for by,” as specified, with the text being a hyperlink, icon, button, or tab to a link to an internet website that includes more detailed disclosures that are required by existing law; or,
  - b) Including the required disclosures directly on the electronic media advertisement itself.

**EXISTING LAW:**

- 1) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA).
- 2) 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 candidates for elective office or a ballot measure or ballot measures, except as specified. Provides that the term "advertisement" does not include any communication as determined by regulations of the FPPC.
- 3) Requires advertisements that support or oppose candidates or ballot measures to include disclosure statements in specified circumstances. Requires these disclosures to comply with certain formatting, display, legibility, and audibility requirements.
  - a) Requires an advertisement supporting or opposing a candidate that is paid for by an independent expenditure (IE) to include a statement that the advertisement was not authorized by a candidate or a committee controlled by a candidate, as specified.
  - b) Defines “top contributors,” for the purposes of these disclosure statements, as the persons from whom the committee paying for an advertisement has received its three highest cumulative contributions of \$50,000 or more.
  - c) Requires generally that an advertisement supporting or opposing a candidate or ballot measure paid for by a committee, other than a political party committee or a candidate’s

own campaign committee, include the words “committee major funding from” followed by the names of the committee’s top contributors, as defined above. Prescribes requirements regarding the form, content, and presentation of the top contributors disclosures on advertisements, which vary significantly based on the medium of the advertisement, as specified.

- 4) Requires an electronic media advertisement that is a graphic, image, animated graphic, or animated image that the online platform hosting the advertisement allows to link to an internet website paid for by a committee, except as specified, to include comply with both of the following:
  - a) Include the text “Who funded this ad?,” “Paid for by,” or “Ad Paid for by” in a contrasting color and a font size that is easily readable by the average viewer for the duration of the advertisement.
  - b) Requires the text to be included or displayed as a hyperlink, icon, button, or tab to an internet website containing the following disclosures (if they apply) in a contrasting color and in no less than 8-point font:
    - i) A disclosure of the committee that is paying for the advertisement;
    - ii) A disclosure of the top contributors to the committee paying for the advertisement, as specified; and,
    - iii) A statement (in the case for an IE supporting or opposing a candidate) that the advertisement was not authorized by a candidate or a committee controlled by a candidate for that office.
- 5) Provides that the text required by 4) above is not required if including the language in an 8-point font would take up more than one-third of the graphic or image. Provides in those circumstances that the advertisement need only include a hyperlink to an internet website containing the disclosures required.
- 6) Requires an internet website that is linked pursuant to 4) or 5) above to remain online and available to the public until 30 days after the date of the election in which the candidate or ballot measure supported or opposed by the advertisement was voted upon.
- 7) Makes violations of the PRA subject to administrative, civil, and criminal penalties.

**FISCAL EFFECT:** None. This bill is keyed nonfiscal by the Legislative Counsel.

**COMMENTS:**

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

Since 2017, the Legislature has passed a number of bills updating campaign advertisement disclosure rules. Notably, AB 249 (Mullin), Chapter 546, Statutes

of 2017, 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 generally allowed for shorter and less extensive disclosures on smaller advertisements and on advertisements where it otherwise was less practical to include the full disclosures required by the law.

In seeking to balance these concerns, AB 249 required electronic media advertisements like banner ads on websites to include the text “Who funded this ad?” with the text being a hyperlink to a website that contained the full text of the required disclosures. Subsequent legislation allowed digital advertisements to use the text “Paid for by” or “Ad paid for by” instead of “Who funded this ad?,” but maintained the requirement that the text must link to a separate internet page that includes the full disclosures

Under a strict reading of the PRA, a committee arguably violates the law if it includes the full text of required disclosures in an electronic media advertisement itself, rather than including a link to the more-detailed disclosures in the advertisement.

AB 1798 allows committees to include the full disclaimer directly on the digital advertisement itself, rather than linking to those disclosures on a separate website. According to the Fair Political Practices Commission, eliminating penalties for over-disclosure on political advertisement ads would free up enforcement resources to pursue more serious violations of the PRA and would allow committees to avoid technical violations that do not result in any public harm.

- 2) **Campaign Finance Advertisement Disclosures and Previous Legislation:** Under the PRA, candidates and political committees must include disclosures on campaign advertisements that identify the committee that paid for or authorized the communication. An advertisement is a communication that is made for the purpose of supporting or opposing a candidate or ballot measure, and includes campaign mailers (including blast e-mails), paid telephone calls, radio and television ads, billboards, yard signs, and electronic media ads. An advertisement disclosure is the portion of a political message that identifies the committee that paid for or authorized the communication. “Paid for by [committee name]” or “Ad paid for by [committee name]” is the basic disclosure required on campaign communications. Under the PRA, different advertisement disclosure rules apply depending on who pays for the ad and the method of the communication. In general, basic disclosures apply to materials disseminated by a candidate for their own election because it is generally clear to the public that the candidate is sending the communication. However, there are stricter advertisement disclosure requirements for ballot measure and independent expenditure advertisements because it is less clear to the public who is responsible for these ads.

Since 2017, the Legislature has passed a number of bills updating campaign finance disclosure rules to ensure they provide accurate information to voters on who is paying for campaign advertisements. Notably, AB 249 (Mullin), Chapter 546, Statutes of 2017, 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 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.

Since the enactment of AB 249, there have been several other bills that have modified the content and format of the disclosure statements, including electronic media advertisements. Notably, AB 2155 (Mullin), Chapter 777, Statutes of 2018, 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. AB 2188 (Mullin), Chapter 754, Statutes of 2018, required online platforms that sell political ads to make specified information about those political ads available to the public and made various changes to the required format for disclosures on electronic media ads. Specifically, AB 2188 permitted electronic ads to use the text "Paid for by," or "Ad Paid for by," instead of "Who funded this ad?" when linking to more detailed disclosure statements. AB 2188 is known as the "Social Media Disclose Act." Additionally, AB 864 (Mullin), Chapter 558, Statutes of 2019, made numerous, mostly 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, including electronic media advertisements.

3) **Technical Amendments:** Committee staff recommends the following technical amendments to this bill:

On page 2, amend the language in lines 20-34 of the bill as follows:

(b) An electronic media advertisement that is a graphic, image, animated graphic, or animated image that the online platform hosting the advertisement allows to link to an internet website paid for by a committee shall comply with either of the following:

(1) Include the disclosures required by Sections 84502, 84503, and 84506.5.

(2) ~~Include (A) Unless subparagraph (B) applies, include~~ the text "Who funded this ad?," "Paid for by," or "Ad Paid for by" in a contrasting color and a font size that is easily readable by the average viewer for the duration of the advertisement. The text shall be included or displayed as a hyperlink, icon, button, or tab to an internet website containing the disclosures required by Sections 84502, 84503, and 84506.5 in a contrasting color and in no less than 8-point font.

~~(c) Notwithstanding subdivision (b), the text required by paragraph (1) of subdivision (b) is not required if including the language (B) If including the text specified in subparagraph (A) in an 8-point font would take up more than one-third of the graphic or image. In those circumstances, the advertisement need only include a hyperlink to an internet website containing the disclosures required by Sections 84502, 84503, and 84506.5.~~

(d) Notwithstanding ~~subdivisions (b) and (c)~~, subdivision (b), an email message or internet website paid for by a committee shall include the disclosures required by Sections 84502, 84503, and 84506.5 printed clearly and legibly in a contrasting color and in no less than 8-point font at the top or bottom of the email message, or at the top or bottom of every publicly accessible page of the internet website, as applicable.

4) **Arguments in Support:** The sponsor of this bill, the FPPC, writes in support:

This bill would make a minor change to a specified advertisement disclosure requirement to allow the full disclosure text to appear on the ad itself, instead of the current rule that only permits a hyperlink to the full disclosure text.

This minor change creates common sense flexibility in the disclosure requirement that benefits the regulated community, without any loss of transparency, thereby easing the burden of compliance and preventing the occurrence of technical violations where there is no public harm.

5) **Related Legislation:** SB 921 (Newman), would establish the Digital Advertisement Transparency and Accountability Act, or DATA Act, a state-run archive to collect and make publicly available copies of, and information about, specified digital political advertisements, as specified. SB 921 is pending in the Senate Rules Committee.

SB 1360 (Umberg), would make changes to disclosure requirements for political advertisements, including changes to the required form, content, and presentation of the disclosures depending on the medium in which the advertisement appears, among other provisions. SB 1360 is pending in the Senate Elections & Constitutional Amendments Committee.

SB 752 (Allen) of the current legislative session would have changed the text and formatting of required disclosures on petitions and electronic media and video campaign advertisements, as specified. SB 752 passed out of this committee on 6-0 vote, but subsequently was held on the Assembly Appropriations Committee's suspense file.

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**

Fair Political Practices Commission (sponsor)

**Opposition**

None on file.

**Analysis Prepared by:** Nichole Becker / ELECTIONS / (916) 319-2094