

Date of Hearing: August 31, 2022

ASSEMBLY COMMITTEE ON ELECTIONS  
Isaac G. Bryan, Chair  
AB 775 (Berman) – As Amended August 16, 2022

**CONCURRENCE IN SENATE AMENDMENTS**

**SUBJECT:** Contribution requirements: recurring contributions.

**SUMMARY:** Prohibits a candidate or committee from accepting a recurring campaign contribution without receiving the contributor's affirmative consent, as specified.

**The Senate amendments** delete the Assembly-approved version of this bill, and instead:

- 1) Require a solicitation by a candidate or committee for a recurring contribution to be in a form that requires affirmative consent from the person making the recurring contribution.
- 2) Prohibit a candidate or committee from accepting 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. Provide that 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.
- 3) Provide that a violation of provisions outlined above 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. Provide that 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:
  - a) The candidate or committee knew or should have known that the solicitation required affirmative consent;
  - b) The candidate or committee knew or should have known that the contributor did not give affirmative consent for making the recurring contribution; and,
  - c) The recurring contributions aggregate to more than \$1,000.
- 4) Require a candidate or committee that accepts a recurring contribution to do all of the following:
  - a) 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.
  - b) Provide all necessary information to cancel the recurring contribution in each communication with the contributor that concerns the contribution.

- c) Immediately cancel a recurring contribution upon request of the contributor.
- 5) Require a recurring contribution that is accepted in response to a solicitation that did not require affirmative consent to be returned to the contributor within 14 days of either of the following, whichever occurs first:
  - a) A receipt of a request from the contributor to return the contribution; or,
  - b) The date on which the candidate or committee becomes aware that the solicitation of the recurring contribution was a violation of this bill.
- 6) Require a contribution accepted after a contributor requested to cancel a recurring contribution to be returned to the contributor within 14 days of the request to cancel the recurring contribution.
- 7) Provide that this bill does not apply to a sponsored committee soliciting or accepting contributions from the sponsor's members, affiliates, employees, or shareholders.
- 8) Define "recurring contribution," for the purposes of this bill, as 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

**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) Requires, pursuant to an FPPC regulation, a candidate or candidate's committee that makes a written solicitation for contributions to identify the committee by name in the solicitation, and requires candidates subject to contribution limits to identify the specific office for which the contributions are solicited in the solicitation.
- 3) Prohibits a person or a committee from soliciting or accepting a contribution from a foreign government or a foreign principal, as defined, in connection with a ballot measure or the election of a candidate to state or local office.
- 4) Prohibits a person, pursuant to the Elections Code, from soliciting a campaign contribution using the name of a political party or candidate without authorization from the political party or candidate, as specified. Requires a person who solicits contributions on behalf of a candidate or committee for the purported use of that candidate or committee without the candidate's or committee's authorization to include a notice in any fundraising communication stating that the person is not authorized by the candidate or committee, as specified. Provides that a violation of these provisions is a misdemeanor.
- 5) Permits the FPPC to impose administrative penalties in situations where it determines that a violation of the PRA has occurred. Permits the FPPC, through this administrative enforcement procedure, to require the person who violated the PRA to do any of the following:

- a) Cease and desist violation of the PRA;
- b) File any reports, statements, or other documents or information required by the PRA; and,
- c) Pay a monetary penalty of up to \$5,000 per violation

**FISCAL EFFECT:** According to the Senate Appropriations Committee regarding a prior version of this bill, pursuant to Senate Rule 28.8, negligible state costs.

**COMMENTS:**

1) **Prior Assembly Consideration of This Bill:** As approved by the Assembly last year, this bill would have required each campus of the California Community Colleges to establish a Basic Needs Coordinator, a Basic Needs Center, and provide documentation of on- and off-campus basic needs resources for the purpose of providing basic needs services to students by specified dates. Subsequent to the Assembly's approval of this measure, it was amended in the Senate to delete the Assembly-approved version of the bill, and to add the current provisions, which were approved by the Senate by a vote of 38-0 on August 29, 2022. As a result, this bill has been re-referred to this committee for further consideration pursuant to Assembly Rule 77.2.

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

Last year the New York Times reported that Donald Trump's 2020 campaign made extensive use of prechecked boxes to authorize recurring donations on its online fundraising platforms. As the campaign ran low on money, its tactics became increasingly deceptive, and it took steps to obscure disclosures that donors were authorizing recurring contributions by failing to de-select those prechecked boxes. In all, the New York Times reported that the Trump operation was forced to refund hundreds of thousands of campaign contributions totaling more than \$122 million.

Fortunately, it appears that campaigns in California have been much less likely to engage in the aggressively deceptive fundraising tactics employed by the Trump campaign. Additionally, some California candidates who previously used pre-checked recurring contribution boxes on their online fundraising platforms stopped doing so in response to criticism of that practice.

AB 775 prohibits a candidate or political committee, as specified, from accepting recurring contributions from a person unless the contributor provides affirmative consent to make a recurring contribution at the time of the initial contribution. AB 775 further makes it clear that passive action by the contributor—such as failing to uncheck a pre-checked box—does not constitute affirmative consent. This bill will ensure that Californians are not misled into making repeated and unintended donations.

3) **Recurring Campaign Contributions:** Since last year, multiple news publications have reported on political campaigns, including campaigns involving candidates for federal office and California state office, using pre-checked boxes in online solicitations to automatically enroll contributors into making recurring contributions. Contributors who did not want to

make recurring contributions had to affirmatively opt-out of doing so by unchecking the pre-checked box. These articles include quotes from contributors who allege that they were misled into giving recurring contributions when they did not intend to do so.

In particular, an April 2021 New York Times article found that, in the 2020 presidential election campaign, one major party candidate's campaign's use of pre-checked boxes to authorize additional contributions in campaign solicitations led to a significant increase in contributor refund requests, suggesting many contributors had not intended to give an additional or recurring contribution. In some cases, a failure by a donor to de-select pre-checked boxes could result in that donor making as many as six campaign contributions in a month. Some contributors had their bank accounts drained and frozen, or their credit cards maxed out. Others ended up making campaign donations well in excess of the maximum allowable under federal law. The Times analysis showed that, after the introduction of pre-checked boxes and other formatting changes which had the effect of making the disclosure of the recurring payment associated with the pre-checked box less prominent, the overall contribution refund rate for the candidate's campaign and that of other political organizations supporting his candidacy grew to over 12% of all funds raised online by the end of 2020, compared with a rate of under 2% at the start of the year, before the pre-checked boxes were introduced.

Shortly after the New York Times article was published, the Federal Elections Committee (FEC) met to discuss possible legislative changes to the Federal Election Campaign Act to recommend to Congress, which included possible action to regulate recurring campaign contributions in federal elections. According to a May 2021 memorandum prepared for the meeting by FEC Commissioner Ellen Weintraub:

[FEC] staff are regularly contacted by individuals who have discovered recurring contributions to political committees have been charged to their credit card accounts or deducted from their checking accounts. In many cases, the contributors do not recall authorizing recurring contributions. Often, these contributors have attempted unsuccessfully to cancel the recurring transactions with the political committee prior to contacting FEC staff.

Some fundraising devices use "pre-checked boxes" to treat a one-time contribution as a recurring contribution. In this way, some committees are considering the contributor to have authorized the recurring contributions without obtaining the contributors' affirmative consent. The [FEC's] experience strongly suggests that many contributors are unaware of the "pre-checked" boxes and are surprised by the already completed transactions appearing on account statements.

The FEC unanimously approved a recommendation that Congress pass a law prohibiting the use of pre-checked boxes for recurring campaign contributions and requiring that campaigns provide contributors with information on the terms of their recurring donation and how to cancel future contributions. At least three bills (S. 1786, H.R. 3832, and H.R. 6350) have been introduced in Congress with language similar to the FEC's proposal. All three bills are pending. The language in this bill is similar to the FEC's recommended language, though it has been refined to address issues raised by numerous stakeholders.

- 4) **Automatic Recurring Payments:** Automatic recurring payments are a common billing practice for many types of businesses, especially those offering subscription-based services to consumers like video streaming, cell phone service, meal kit delivery, or gym membership. Automatic payments can provide a more convenient billing experience for consumers and more predictable revenue and timely bill payments for businesses. However, according to the Federal Trade Commission (FTC), so-called “negative option marketing” practices, where “sellers interpret a customer’s failure to take an affirmative action, either to reject an offer or cancel an agreement, as assent to be charged for goods or services” can also “pose serious financial risks to consumers if appropriate disclosures are not made and consumers are billed for goods or services without their consent.” Over the past decade, several companies have entered into class action settlements with subscribers over allegedly deceptive automatic renewal practices.

In response to such complaints, in 2009, the Legislature passed and Governor Schwarzenegger signed SB 340 (Yee), Chapter 350, Statutes of 2009, which imposed new restrictions on automatic purchase renewals. SB 340 requires that a business making an automatic renewal offer present the terms of the offer in a clear and conspicuous manner, receive the consumer’s affirmative consent to the automatic renewal offer terms, provide an acknowledgment to the consumer that includes the automatic renewal terms and information regarding how to cancel the policy, and provide an easy-to-use method for cancelling payments, among other provisions. SB 313 (Hertzberg), Chapter 356, Statutes of 2017, added to these provisions by requiring additional disclosure for automatic renewal offers that include a free introductory gift and by requiring that there be an online cancellation option where an automatic renewal offer is accepted online, among other changes.

- 5) **Existing Restrictions on Campaign Solicitations:** Existing law includes some restrictions on how candidates or campaign committees solicit campaign funds. As detailed above, many of these restrictions are to minimize the possibility of contributors being misled as to the identity of the recipient, or the relationship between the recipient and other candidates and campaign committees. The Elections Code includes restrictions on campaign committees’ (and other entities’) ability to solicit funds using a committee name that includes the name of another campaign committee, candidate, or political party, without the authorization of that committee, candidate, or party, as specified. Also pursuant to the Elections Code, a person who is raising funds to benefit a candidate or campaign committee for the purported and exclusive use of that candidate or committee, but who never received that candidate or committee’s authorization, must include a notice in any fundraising communication clearly and conspicuously disclosing that fact. Because these restrictions are not codified in the PRA, the FPPC is not authorized to enforce them.

The PRA and FPPC regulations also include some restrictions on solicitations, which the FPPC can enforce. Notably, under FPPC regulations, a written campaign contribution solicitation by a candidate or candidate’s committee must include the committee’s name. In the case of candidates for offices that are subject to contribution limits, the solicitation must also include the office being sought by the candidate. The PRA also prohibits committees from soliciting or accepting contributions from foreign governments or principals, as specified.

This bill would amend the PRA to prohibit a campaign from soliciting a recurring contribution in a form that does not require affirmative consent from the person making the

recurring contribution, or from accepting a recurring contribution without receiving the affirmative consent of the contributor. This bill additionally requires that campaigns provide contributors with a receipt for a recurring contribution, as specified. Because this bill amends the PRA, the FPPC would be authorized to enforce these new provisions.

As detailed above, the FPPC generally may impose administrative fines of up to \$5,000 per violation of the PRA. These standard administrative fines would be applicable to violations of this bill each time a candidate or committee solicits a recurring contribution in a form that does not require affirmative consent, or each time a candidate or committee accepts an initial recurring contribution in response to a solicitation that was in a form that did not require affirmative consent from the contributor. Recurring contributions accepted *subsequent to* the initial recurring contribution would be subject to an additional fine not to exceed three times the aggregate amount of the subsequent recurring contributions received if certain conditions are met. Finally, this bill also requires any recurring contribution that is solicited or received in violation of this bill to be returned to the contributor.

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

AB 775 would address the campaign fundraising tactic of using pre-checked boxes for enrolling individuals in automatic recurring campaign contributions. This tactic turns a single campaign contribution into a recurring contribution without any active action or consent by the contributor, resulting in some contributors inadvertently signing up for repeating contributions without their knowledge.

AB 775 creates a commonsense solution that will ensure that individuals who contribute to campaigns have full control over the amount and frequency of their contributions and are able to receive timely refunds if they are improperly enrolled in automatic recurring contributions.

This important legislation would protect against a practice that can be used in deceptive and coercive ways and would help sustain public confidence in the state's electoral and political processes and elected officials.

7) **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**

California Fair Political Practices Commission (sponsor)  
California Common Cause  
League of Women Voters of California

**Opposition**

None on file.

**Analysis Prepared by:** Ethan Jones / ELECTIONS / (916) 319-2094