

Date of Hearing: May 10, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 1104 (Chau) – As Amended April 19, 2017

SUBJECT: The California Political Cyberfraud Abatement Act.

SUMMARY: Expands California's Political Cyberfraud Abatement Act (Act) to include cyberfraud committed against candidate campaigns, instead of only applying to ballot measure campaigns.

EXISTING LAW:

- 1) Provides, pursuant to the Act, that it is unlawful for a person, with intent to mislead, deceive, or defraud, to commit act of political cyberfraud. Defines "political cyberfraud," for the purposes of the Act, to mean a knowing and willful act concerning a political Web site that is committed with the intent to deny a person access to a political Web site, deny a person the opportunity to register a domain name for a political Web site, or cause a person reasonably to believe that a political Web site has been posted by a person other than the person who posted the Web site, and would cause a reasonable person, after reading the Web site, to believe the site actually represents the views of the proponent or opponent of a ballot measure.
- 2) Provides that political cyberfraud includes, but is not limited to, any of the following acts:
 - a) Intentionally diverting or redirecting access to a political Web site to another person's Web site by the use of a similar domain name, meta-tags, or other electronic measures;
 - b) Intentionally preventing or denying exit from a political Web site by the use of frames, hyperlinks, mousetrapping, popup screens, or other electronic measures;
 - c) Registering a domain name that is similar to another domain name for a political Web site; or,
 - d) Intentionally preventing the use of a domain name for a political Web site by registering and holding the domain name or by reselling it to another with the intent of preventing its use, or both.
- 3) Defines "Political Web site," for the purposes of the Act, to mean a Web site that urges or appears to urge the support or opposition of a ballot measure.
- 4) Allows for a civil action to enforce the Act and provides for injunctive relief, including a court order to transfer a domain name.
- 5) Makes it unlawful for a person, with bad faith intent, to register, traffic in, or use a domain name that is identical or confusingly similar to the personal name of another living person or deceased personality, without regard to the goods and services of the parties.

FISCAL EFFECT: None. This bill is keyed non-fiscal by Legislative Counsel.

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

California law provides strong cyberfraud protection for ballot measure campaigns, but not for candidates for public office. AB 1104 attacks the problem of political cyberfraud by expanding California's political cyberfraud laws to provide protections to candidate campaigns in addition to the current law protections for ballot measures.

2) **California's Political Cyberfraud Laws:** In 2001, the Legislature passed and the Governor signed SB 412 (Vasconcellos), Chapter 927, Statutes of 2001, also known as the Act, which prohibited cyberfraud in ballot measure campaigns. Specifically, SB 412 prohibits a person, with the intent to mislead, deceive, or defraud, from committing an act of political cyberfraud, as defined. According to previous analyses, the intent of SB 412 was to address the lack of policy in California regarding the use of misleading domain names in relation to elections. In particular, analyses points out that during the 2000 statewide general election, the opponents of a statewide ballot measure registered domain names in support of the statewide ballot measure and redirected individuals visiting any of these websites to the opponent's website.

SB 412 contained a January 1, 2003 sunset provision, however, the Act was later re-enacted as a permanent law in 2003 by AB 277 (Dutra), Chapter 277, Statutes of 2003. Additionally, AB 277 extended the Act's application to a Web site that a reasonable person would believe represents the views of a proponent or opponent of a ballot measure.

The Act applies specifically to ballot measures – not candidates – and makes it unlawful for a person with intent to mislead, deceive, or defraud to commit an act of political cyberfraud. This bill expands the Act to apply to cyberfraud committed against candidate campaigns.

According to background material provided by the author's office, misinformation campaigns, also known as “fake news,” posed a real danger to the U.S. presidential race last year. Moreover, both major political parties as well as minor parties raised serious concerns about the public's lack of ability to distinguish between factual and fake news reports posted on the Internet. While California law provides strong cyberfraud protection for ballot measure campaigns, it does not provide the similar protections for candidates for public office.

3) **Prior Legislation:** AB 277 (Dutra), Chapter 277, Statutes of 2003, among other provisions, reinstated the California Political Cyberfraud Abatement Act and made it permanent.

SB 412 (Vasconcellos), Chapter 927, Statutes of 2001, created the California Political Cyberfraud Abatement Act and prohibited cyberfraud as to ballot measure campaigns subject to a sunset provision.

4) **Double-referral:** This bill passed out of the Assembly Privacy and Consumer Protection Committee on April 25, 2017, by a 9-0 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

California Newspaper Publishers Association (prior version)

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