

Date of Hearing: June 7, 2023

ASSEMBLY COMMITTEE ON ELECTIONS
Isaac G. Bryan, Chair
SB 678 (Umberg) – As Introduced February 16, 2023

SENATE VOTE: 38-0

SUBJECT: Elections: disclosures.

SUMMARY: Requires online political content to include a disclaimer if the person posting the content is being paid by a political committee to do so, as specified. Specifically, **this bill:**

- 1) Requires a person who is being paid by a committee to post content on an internet website, web application, or digital application, other than the committee’s own website, profile, or landing page, for the purpose of supporting or opposing a candidate for elective office or a ballot measure, to include a disclaimer with the content stating that the person was paid by the committee in connection with the posting. Requires the disclaimer to be legible to an average viewer or, if the content is in audio format, to be clearly audible. Provides that a disclaimer substantially similar to the following satisfies this requirement: “The author was paid by [name of committee and committee identification number] in connection with this posting.”
- 2) Requires a committee that pays a person to post content, as described above in 1), to notify the person of the disclaimer requirement.
- 3) Provides that a person paid to post content who fails to include a disclaimer as required by this bill is not subject to administrative penalties. Permits the Fair Political Practices Commission (FPPC) to seek injunctive relief to compel compliance with the requirement after it notifies the person who was paid to post content of the disclaimer requirement.

EXISTING LAW:

- 1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA). (Government Code §§83100, 83111)
- 2) Defines “advertisement,” for the purpose of specified provisions 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. (Government Code §84501(a)) Requires, generally, an advertisement that is paid for by a political committee to include a disclosure of the name of the committee that paid for the advertisement, as specified. (Government Code §84502)
- 3) Provides that an electronic media advertisement in the form of a post, comment, or similar communication made via a form of electronic media that allows users to engage in discourse and post content, or any other type of social media, is not required to include specified disclosures on each such post, comment, or similar communication if both of the following apply:

- a) The advertisement was posted directly by the social media page or account of the committee that paid for the advertisement.
 - b) The required disclosures are included on the cover or header photo of the committee's profile, landing page, or similar location for the committee's page or account from which the post, comment, or similar communication was made, as specified. (Government Code §84504.3)
- 4) Requires an advertisement that supports or opposes a ballot measure, and that includes the appearance of an individual who was paid \$5,000 or more to appear in the advertisement, to include a disclosure statement stating "(spokesperson's name) is being paid by this campaign or its donors," as specified. (Government Code §84511)
 - 5) Requires a committee, as specified, that pays a person to provide favorable or unfavorable content about a candidate or ballot measure on a website, web application, or digital application other than the committee's own website, or profile or landing page, to include the following information when reporting such payments on campaign disclosure reports:
 - a) The amount of the payment;
 - b) The payee;
 - c) The name and public username or handle of the person providing content;
 - d) The name of each website or each uniform resource locator (URL) for which the communication is published; and,
 - e) In the case of an article, op-ed, weblog ("blog") post, or similar communication, the title of the communication. (California Code of Regulations, Title 2, §18421.5)
 - 6) Makes violations of the PRA subject to administrative, civil, and criminal penalties. (Government Code §§83116, 91000-91005.5)
 - 7) Permits the FPPC to seek injunctive relief in a superior court to compel disclosure consistent with the PRA. (Government Code §90009)

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

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

SB 678 would require a person paid by a campaign committee to support a candidate or ballot measure online to disclose that the committee has paid them. The Political Reform Act requires political advertisements to include specified disclosure statements that identify the name of the campaign committee paying for the advertisement and the top contributors to the committee. These disclaimers are required for political advertisements online but only if the campaign committee post them. Disclaimers are not required if the committee pays a third

party person, such as a social media “influencer,” to post content that supports or opposes a candidate or ballot measure.

The absence of any disclosure can be misleading to voters who are viewing the content, as the content could appear to be the person’s natural speech, as opposed to a paid message. Requiring these paid posts to include a short and straightforward disclaimer would provide important information to voters viewing the content that would help voters understand the context and motivation of the political endorsement or opposition.

- 2) **Existing Political Advertisement Disclosures:** Under state and federal law, campaign committees must put disclosures on certain campaign advertising that identifies the committee that paid for the communication, including on campaign mailers, radio and television ads, telephone robocalls, and electronic media ads. Under certain circumstances, campaign advertisements must also include a disclosure that identifies certain top contributors of \$50,000 or more to the committee that is paying for the advertisement.

Six years ago, the Legislature approved and Governor Brown 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. Since the enactment of AB 249, there have been several other bills that have modified the content and format of the disclosure statements created by that bill.

One of the provisions of AB 249 specified that advertisements made via a form of electronic media that allows users to engage in discourse and post content, or any other type of social media, are not required to include disclosures on each post, comment, or similar communication if the required disclosures are made on the committee’s profile, landing page, or similar location. This provision was designed to ensure that disclosure requirements were not overly burdensome, and did not interfere with the use of social media and similar types of communication where the nature of the communication limits the amount of information that can be conveyed in an individual post or comment. After AB 249 was enacted, however, it became clear that this exception to the disclosure rules for social media posts was broader than intended. Because of this exception, it was possible that a social media post that was made by a third party, but paid for by a committee, was not required to include any disclosures about the committee that paid for the post or even the fact that the third party had been paid to make the post. Last year, SB 1360 (Umberg), Chapter 887, Statutes of 2022, narrowed the exception so that it applies only when a communication is posted directly by the social media page or account of the committee that paid for the advertisement.

Notwithstanding that change, it is unclear whether state law requires a disclosure in all circumstances on content that supports or opposes a candidate or ballot measure where a committee pays a third-party person, such as a social media “influencer,” to post that content on the internet, web application, or digital application. Although existing law, as detailed above, requires a committee to provide details about such communications on its campaign disclosure reports, the FPPC, which has the responsibility for enforcing these disclosure requirements and is the sponsor of this bill, believes that such disclosures are not necessarily

required in the content of the communications themselves in all circumstances. This bill seeks to ensure that disclosures are required on electronic media communications that support or oppose candidates or ballot measures where a committee pays a person to post that content. The disclosures required by this bill would indicate that the author was paid in connection with the posting and would identify the committee that paid the author, but would not be required to include an identification of top contributors to the committee that paid the author.

- 3) **Enforcement:** As detailed above, violations of the PRA generally are subject to administrative, civil, and criminal penalties. Additionally, the PRA gives the FPPC the authority to seek injunctive relief to compel disclosure required by the PRA.

This bill provides that a person paid to post content who fails to include a disclaimer as required by this bill is not subject to administrative penalties, but expressly allows the FPPC to seek injunctive relief to compel compliance under this bill. This bill does not, however, eliminate the possibility of administrative enforcement actions for violations. Specifically, a committee that pays a person to post content and that fails to notify that person of the requirement to include a disclaimer in the content would still be subject to an administrative enforcement action.

- 4) **Suggested Amendments:** Although enforcement actions for violations of the PRA generally are brought through the FPPC's administrative enforcement process, existing law also allows civil and criminal penalties to be imposed for PRA violations. While this bill provides that a person paid to post content is not subject to administrative penalties for failing to include a required disclaimer, the bill is silent with respect to civil and criminal penalties. Committee staff recommends that this bill be amended to provide similarly that a person paid to post content who does not include a disclosure is not subject to civil or criminal penalties.

While existing law may not require a disclaimer in *all* circumstances on content where a committee pays a third-party person, such as a social media "influencer," to post that content, existing law may nonetheless require disclaimers in certain circumstances. To ensure that this bill does not impose duplicative or conflicting disclaimer requirements in those circumstances, committee staff recommends that this bill be amended to specify that it is not applicable to communications that are required to include disclaimers under other provisions of the PRA.

One provision of AB 249 of 2017 specified that disclaimers are not required on advertisements made via social media for which the only expense or cost of the communication is compensated staff time, unless the social media account where the content is posted was created only for the purpose of campaign advertisements. This provision was designed, in part, to ensure that campaign staff were not required to include disclaimers on posts that they made on their personal social media accounts. To ensure that this bill does not require disclaimers in those circumstances, committee staff recommends that this bill be amended to specify that the disclaimer required by this bill does not apply to content posted by a compensated employee of a committee on the employee's own social media page or account if the only expense or cost of the communication is compensated staff time, unless

the person's principal duties as an employee are to post content on the person's own social media page or account.

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

The Political Reform Act of 1974 requires political advertisements to include specified disclosure statements that identify the name of the campaign committee paying for the advertisement and the top contributors to that committee. These disclaimers are required for political advertisements posted online, including on social media platforms, but only if they are posted by the committee itself. These disclaimers are not required if the committee pays a third-party person, such as a social media "influencer," to post content that supports or opposes a candidate or ballot measure.

The absence of any disclaimer can be misleading to voters who are viewing the content, as the content could appear to be the person's natural speech, as opposed to a paid message.

SB 678 would create a direct and effective solution by requiring these paid posts to include a short disclaimer stating that the person was paid by a committee in connection with the post, which would provide important information to voters that would help them understand the context of the political endorsement or opposition.

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)
California Common Cause
League of Women Voters of California

Opposition

None on file.

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