

Date of Hearing: April 25, 2018

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 2155 (Mullin) – As Amended April 5, 2018

**SUBJECT:** Political Reform Act of 1974: campaign disclosures.

**SUMMARY:** Makes various changes to state law governing the content and format of disclosure statements that are required to appear on communications sent by candidates and committees.

Specifically, **this bill:**

- 1) Reduces the number of substantially similar communications that a candidate, political party, or committee may send in a calendar month by mail or email, from 200 to 50, before the communication meets the definition of a "mass mailing" or a "mass electronic mailing" that is subject to existing requirements that it include a specified disclosure statement identifying the entity that is sending or paying for the mailing or electronic mailing, as specified.
- 2) Provides that the following types of communications are not considered an "advertisement," for the purposes of the Political Reform Act (PRA):
  - a) An electronic media communication addressed to recipients, such as email messages or text messages, from an organization, other than a political party, to its supporters who have opted in or asked to receive messages from the organization.
  - b) Any communication that was solicited by the recipient, including, but not limited to, acknowledgments for contributions or information that the recipient communicated to the organization.
  - c) Any communication from a member of an organization to up to 50 other persons that the member personally knows, if the member does not use the campaign's resources for the communication.
- 3) Limits the discretion of the Fair Political Practices Commission (FPPC) to determine that certain communications are not advertisements under the PRA, and instead allows the FPPC to determine that certain *types* of communications are not advertisements under the PRA in circumstances where the inclusion of the required disclosures would be impracticable or would severely interfere with the committee's ability to convey the intended message due to the nature of the technology used to make the communication. Prohibits the FPPC from setting quantity thresholds not included in the PRA when determining that a type of communication is not an advertisement for the purposes of the PRA.
- 4) Changes the language required to be used in advertisements that must include a disclosure of the entity paying for the advertisement from "Paid for by" to "Ad paid for by," except that printed letters, Internet websites, and email messages may use "Paid for by."
- 5) Makes the following changes to the formatting requirements for disclosures that are required to appear on video or print advertisements:

- a) Clarifies that for advertisements that are required to include a listing of the three top contributors to the committee paying for the advertisement, the first listed top contributor must be on its own line, and cannot be listed on the same line as the "Ad paid for by" disclosure.
  - b) Requires all text in the disclosure to be centered horizontally in the disclosure area, instead of requiring only the names of the top contributors to be centered.
  - c) Requires that the text of the written disclosures be underlined, other than the list of the top contributors, if the advertisement is required to list top contributors, as specified.
- 6) Makes the following changes to the formatting requirements for disclosures that are required to appear on print advertisements:
- a) Requires a disclosure that must appear on specified advertisements that are paid for by independent expenditures (IEs) to appear on a separate line below any listing of top contributors that is required to appear in the advertisement.
  - b) Requires a disclosure of an Internet website that contains additional funding details that must appear on advertisements paid for by specified committees to appear on a separate line below the IE disclosure detailed above.
- 7) Makes disclosure statements that are required to appear in email advertisements generally subject to the same formatting and display requirements as apply to disclosures on advertisements that are Internet websites.
- 8) Requires disclosures on email advertisements and Internet websites to be printed clearly and legibly, and to appear at top or bottom of the email or of every publicly accessible page of the website.
- 9) Makes technical changes.

**EXISTING LAW:**

- 1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the PRA.
- 2) Defines "mass mailing," for the purposes of the PRA, as over two hundred substantially similar pieces of mail, not including a form letter or other mail which is sent in response to an unsolicited request, letter, or other inquiry. Defines "mass electronic mailing," for the purposes of the certain identification requirements found in the PRA, as sending more than two hundred substantially similar pieces of electronic mail within a calendar month.
- 3) 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.
- 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 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.

- 5) Requires an advertisement, as defined, that supports or opposes a candidate or ballot measure, to include the words "paid for by" followed by the name of the committee that is paying for the advertisement if either of the following is true:
  - a) The advertisement is paid for by a committee that is neither a political party committee nor a candidate's own campaign committee; or,
  - b) If the advertisement is paid for by a political party committee or a candidate's own campaign committee, the advertisement is one of the following:
    - i) Paid for by an IE;
    - ii) An advertisement supporting or opposing a ballot measure; or,
    - iii) A radio or television advertisement.
- 6) Requires an advertisement to include the words "committee major funding from" followed by the names of the three top contributors to the committee paying for the advertisement, as specified, if the advertisement is paid for by a committee that is both of the following:
  - a) Neither a political party committee nor a candidate's own campaign committee; and,
  - b) A committee that has received contributions of \$2,000 or more in a calendar year (commonly known as a "recipient committee").
- 7) Requires disclosure statements that are required to appear in advertisements pursuant to the PRA to comply with certain formatting, display, legibility, and audibility requirements.

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

**COMMENTS:**

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

Although it is essential for individuals and organizations to be able to communicate effectively with voters, it is equally important that voters not be deceived about who pays for the ads. However, weak disclosure requirements have allowed campaigns to obfuscate their top funders.

AB 249 enacted in 2017, provided for much greater transparency by requiring the disclosure of the actual funders of such campaign advertising.

During implementation hearings of AB 249, at the [FPPC], a small number of issues were raised that needed further clarification by the Legislature. AB 2155 seeks to provide that clarification.

- 2) **Disclose Act and Suggested Amendments:** Last year, 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.

This bill proposes a number of changes to AB 249. While many of the changes proposed by this bill are minor, clarifying, or technical in nature, other proposed changes represent significant and substantive revisions to the Disclose Act that are inconsistent with negotiated compromises regarding the scope and reach of AB 249.

Most notably, AB 249 was carefully written to maintain the existing disclosure requirements that applied to communications made by political parties and by candidates' own campaign committees, including mass mailings and mass electronic mailings sent by those committees. This bill, however, proposes to change the definition of the terms "mass mailing" and "mass electronic mailing" to capture communications that reach a significantly smaller audience compared to how those terms currently are defined. The net effect of this change would be to require new disclosures on communications made by political parties and candidate's own campaign committees.

In light of the long legislative process that was required to pass the Disclose Act, including the extensive negotiations between stakeholders over many of the details in that bill, the author and the committee may wish to consider whether it is prudent to begin revisiting significant policy decisions that were reached as part of negotiations over the Disclose Act before a single statewide election is conducted with its provisions in effect. **To avoid making substantive changes to the Disclose Act that are inconsistent with negotiated compromises, the author and the committee may wish to consider an amendment to delete Section 1 from the bill.**

This bill also proposes a number of other changes to the Disclose Act, most of which are less-substantive than the proposed changes to the definition of "mass mailing" and "mass electronic mailing." Those changes generally fall into one of the following three categories:

- a) **"Paid For By" Disclosures:** AB 249 required most types of advertisements to include the words "Paid for by" followed by the name of the committee paying for the advertisement, as specified. This bill changes the language to be used for most disclosures to "Ad paid for by" instead of "Paid for by." According to the author, this change is to address concerns that having disclosures on ballot measures reading "Paid for by" could imply that the *ballot measure* was paid for by that entity, rather than the ad being paid for by that entity. Under this bill, printed letters, Internet Web sites, and email messages would still be permitted to use the words "Paid for by" instead of using "Ad paid for by."

- b) **Communications Excluded from the Definition of Advertisement:** This bill expressly excludes certain communications from the definition of the term "advertisement," thereby excluding those communications from the requirements to include disclosure statements that may otherwise be required under the Disclose Act. First, this bill provides that electronic media communications sent to individuals who have opted to receive those communications are not "advertisements" under the PRA. Similarly, this bill excludes communications that are solicited by the recipient, including acknowledgments for contributions or information that the recipient communicated to the committee, from the types of communications that are considered to be "advertisements." These two exceptions generally are consistent with policies found elsewhere in the PRA.

The third type of communication that this bill seeks to exclude from the definition of the term "advertisement" are communications from a member of an organization to up to 50 other persons that the member personally knows, if the member does not use the campaign's resources for the communication. In situations where a person is not using a committee's resources for making a communication, however, that communication already would not be considered an "advertisement" under the PRA. As such, the purpose and effect of this exclusion is unclear. **In the absence of additional information about the need for or desirability of this exclusion, the author and the committee may wish to consider an amendment to remove it from the bill. Such an amendment would entail deleting lines 39 and 40 from page 5 and lines 1 and 2 from page 6 of the bill.**

Finally, existing law gives the FPPC broad discretion to decide, by regulation, that any other communication is not an "advertisement" for the purposes of the PRA. This bill significantly restricts that discretion, allowing the FPPC to determine only that certain *types* of communications are not advertisements, and only in circumstances where the inclusion of disclosures is impracticable or would severely interfere with a committee's ability to convey its message due to the nature of the technology used to make the communication. This bill further prohibits the FPPC from changing or inserting quantity thresholds for determining what constitutes an "advertisement" under the PRA unless those thresholds are expressly set forth in the PRA. In the past, regulations that the FPPC has adopted to specify that certain communications are not "advertisements" under the PRA generally have focused on communications where the inclusion of disclosures would be impracticable. When the FPPC recently was considering adopting regulations to implement the Disclose Act, however, it considered proposals to exclude certain communications from the requirements of the Disclose Act if those communications were sent to fewer than 200 recipients. While that threshold is consistent with the current definition of the term "mass mailing" under the PRA, the sponsor and the author of the Disclose Act felt that it was inconsistent with the language and intent of the Disclose Act.

- c) **Disclosure Formatting Requirements:** This bill makes a number of relatively minor changes to the formatting requirements for disclosures that are required to appear on advertisements pursuant to AB 249. Generally, the formatting changes that this bill proposes are consistent with the manner in which disclosures appeared in examples that were prepared for illustrative purposes during the consideration of AB 249.
- 3) **Technical Amendments:** Committee staff recommends the following technical amendments to this bill:

**On page 4, line 28, strike out "85402 or 85404.3" and insert "84502 or 84504.3".** (Note that this amendment is unnecessary if Section 1 is deleted from the bill, as suggested above in comment #2 of this analysis.)

**On page 5, line 34, strike out "other than a political party".**

**On page 5, line 34, strike out "its supporters" and insert "persons".**

**On page 10, line 4, after "contrasting" insert: "color".**

- 4) **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 Clean Money Campaign  
League of Women Voters of California

**Opposition**

None on file.

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