
**SENATE COMMITTEE ON
ELECTIONS AND CONSTITUTIONAL AMENDMENTS**
Senator Steven Glazer, Chair
2023 - 2024 Regular

Bill No: SB 678 **Hearing Date:** 4/18/23
Author: Umberg
Version: 2/16/23
Urgency: No **Fiscal:** Yes
Consultant: Karen French

Subject: Elections: disclosures

DIGEST

This bill requires disclosure disclaimers when a person who is paid by a committee to post in support or opposition of candidates and measures on social media.

ANALYSIS

Existing law:

- 1) The Political Reform Act of 1974 (PRA) provides for the comprehensive regulation of campaign financing and related matters, including by prohibiting, limiting, or requiring disclosure of certain political activities and by regulating certain political advertisements. Provides that the PRA regulate campaign financing, conflicts of interest, lobbying, and governmental ethics.
- 2) Provides that the Fair Political Practices Commission (FPPC) has primary responsibility for the impartial and effective administration of the PRA, including investigating and administratively prosecuting violations of the PRA.
- 3) Provides that the Legislature may amend the PRA to further the PRA's purposes upon a two-thirds vote of each house in compliance with specified procedural requirements, including that the bill in its final form has been delivered for distribution to the news media and to persons who have requested to receive copies of such bills at least twelve days before passage in each house.
- 4) Requires Legislative Counsel to make specified information pertaining to legislative measures publicly available in electronic form on a computer network, including the text, bill history, and bill status of each bill introduced in each current legislative session.

This bill:

- 1) Requires a person who is paid by a committee to support or oppose a candidate or ballot measure on an internet website, web application, or digital application, as specified, to include a disclaimer stating that they were paid by the committee in connection with the post.

- 2) Requires a committee to notify the person posting the content of the disclaimer requirement.
- 3) Provides that a person who fails to post the disclaimer would not be subject to administrative penalties.
- 4) Authorizes the FPPC to seek injunctive relief to compel disclosure.

BACKGROUND

Existing “Paid Spokesperson” Requirements. In 2000, the Legislature passed and the Governor signed SB 1223 (Burton), Chapter 102, Statutes of 2000, which became Proposition 34 on the November 2000 General Election Ballot. The proposition, which passed with 60% of the vote, made numerous substantive changes to the PRA including enacting new campaign disclosure requirements and establishing new campaign contribution limits. One of the provisions of Proposition 34 established new reporting and disclaimer requirements for ballot measure advertisements that featured paid spokespeople. Those requirements apply only when a committee makes an expenditure of \$5,000 or more to the individual appearing in the advertisement.

COMMENTS

- 1) 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 PRA 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 posts 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) Argument in Support. In a letter supporting SB 678, the Fair Political Practices Commission states, in part, the following:

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.

- 3) Additional Argument in Support. In a letter supporting SB 678, the League of Women Voters states, in part, the following:

The League supports voters' right to know how campaigns are being financed. Voters should have the right to know whether advocates are being paid to deliver their message, so that the voter is in a better position to evaluate the credibility of the information conveyed. SB 678 would fill a void. Currently, social media influencers are paid by campaigns to support or oppose candidates and measures but are not required to disclose that they have been paid by a committee. We suggest that the bill identify a threshold minimum payment that would trigger the disclosure requirements.

- 4) Questions Relating to Disclaimers. In response to the League of Women Voters suggestion of threshold amount and questions from the committee regarding other disclaimers, the FPPC provided the following additional information:

Any entity that qualifies as a "committee" under the PRA is required to itemize all expenditures of \$100 or more on the periodic campaign disclosure reports that it is required to file. To the extent that a committee paid a spokesperson \$100 or more to appear in an advertisement supporting or opposing a ballot measure, that information is already required to be reported on the committee's campaign disclosure statements.

The disclosure on campaign statements only occurs after the fact, and people who are viewing the online content in the moment would have no way to know that the content was paid. SB 678 would address this problem by requiring a simple disclaimer statement to be posted concurrent with the content posted by the third party.

The PRA has detailed requirements for disclaimers on campaign ads. (Article 5 commencing with Section 84501) and disclaimers on electronic media advertisements are required for advertisements paid for by committees. Advertisement is defined in Section 84501: "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.

However, disclaimers are not required on communications that are posted by third parties, such as social media "influencers" or other individuals or groups.

This results in online content that may appear to originate from the individual or group, and the public viewing the content would have no idea that the message was paid for by a committee.

The FPPC passed regulations to require more detailed disclosure on campaign finance statements of payments to these individuals or groups for this purpose. Subdivision (d) of Regulation 18421.5 requires that: "When reporting these expenditures, whether the payment is made directly or through a third party, committees must list specific details of the payment, including the amount of the payment, the payee, the name and public username or handle of the person providing content, the name of each website or each URL for which the communication is published and, in the case of an article, op-ed, weblog ("blog") post, or similar communication, the title of the communication. The committee must report the expenditure for online content using the expenditure code "WEB" and the specifics described in this section."

SB 678 is meant to increase transparency for the public, and is intentionally designed to not be punitive. Failure to post the disclaimer would not subject the third party to penalties under the PRA, but the Commission would be authorized to seek injunctive relief to compel the disclaimer if the third party does not post the disclaimer.

RELATED/PRIOR LEGISLATION

AB 510 (Ammiano), Chapter 868, Statutes of 2014, required an advertisement relating to a ballot measure to include a specified disclaimer if it includes an appearance by an individual who is paid to appear in the advertisement and it communicates that the individual is a member of an occupation that requires licensure or specialized training.

AB 990 (Bonilla), Chapter 747, Statutes of 2015, increased the size, prominence, color contrast, and disclaimer language of disclosure statements that are required to appear on certain campaign advertisements.

POSITIONS

Sponsor: Fair Political Practices Commission

Support: League of Women Voters of California

Oppose: None Received

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