

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 768 (Delegate Rosenberg)
Ways and Means

**Election Law - Online Political Advertisements and Campaign Material -
Disclosure**

This bill establishes recordkeeping and disclosure requirements applicable to (1) online platforms on which online political advertisements are distributed or transmitted and (2) those responsible for the online political advertisements. **The bill takes effect June 1, 2018.**

Fiscal Summary

State Effect: The bill can be implemented with existing resources.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Recordkeeping and Disclosure by Online Platforms

The bill requires an online platform to (1) retain a digital copy of each online political advertisement that the online platform distributes or transmits and (2) maintain account books and records that include specified information related to the online political advertisement, those responsible for it, and its distribution or transmission. The person who purchases an online political advertisement must provide necessary information to the

online platform in order for the online platform to comply with the recordkeeping requirements.

Those records must be made available by the online platform for online public inspection as soon as possible after an online political advertisement is purchased and for at least one year after the general election following the date when the online political advertisement was distributed or transmitted. The online platform must establish an online interface that allows the public to search the records by candidate, ballot issue, purchaser, and date.

“Online platform” is defined as any public-facing website, web application, or digital application, including a social network or search engine, that has 500,000 or more unique monthly U.S. visitors or users for a majority of months during the immediately preceding 12 months.

“Online political advertisement” is defined as any electronic communication that (1) is placed or promoted for a fee on an online platform; (2) is distributed or transmitted to 5,000 or more individuals; (3) refers to a clearly identified candidate or ballot issue; and (4) does not propose a commercial transaction.

Reporting and Recordkeeping by Persons Responsible for Online Political Advertisements

The bill makes online political advertisements subject to existing independent expenditure and electioneering communication reporting requirements, requiring reporting of specified independent expenditures for online political advertisements and disbursements for electioneering communications through online political advertisements. The bill also requires all persons filing independent expenditure reports and electioneering communication reports to, similar to a campaign finance entity, keep a sample copy of an item of campaign material that the person is responsible for, publisher of, and distributor of for at least one year after the general election following the date when the item was published or distributed.

Current Law:

Campaign Material

Campaign material must have an “authority line” identifying those responsible for the production and distribution of the campaign material, whether a campaign finance entity or any other person. Each campaign finance entity responsible for, publisher of, and distributor of, an item of campaign material must keep a sample copy of the item for at least one year after the general election following the date when the item was published or distributed.

“Campaign material” is defined as any material that (1) contains text, graphics, or other images; (2) relates to a candidate, a prospective candidate, or the approval or rejection of a question or prospective question; and (3) is published or distributed. “Campaign material” includes (1) material transmitted by or appearing on the Internet or other electronic medium and (2) an oral commercial campaign advertisement.

Independent Expenditure and Electioneering Communication Reporting

Independent expenditures in general – political spending by individuals or organizations without coordination with a candidate – cannot be limited or prohibited, pursuant to the 2010 Supreme Court decision *Citizens United v. FEC*. Requirements for disclosure of independent expenditures, however, have been upheld by courts. Under Maryland’s disclosure requirements, independent expenditures are expenditures for public communications that are not made in coordination with a candidate or campaign finance entity and that expressly advocate the success or defeat of a clearly identified candidate or ballot question. Electioneering communications, on the other hand, do not expressly advocate the success or defeat of a candidate or ballot question but refer to a clearly identified candidate or ballot question, are made within 60 days of an election, are capable of being received by a certain amount of individuals (with the amount depending on the type of communication) in the constituency where the candidate or ballot question is on the ballot, and are not made in coordination with a candidate or campaign finance entity.

Within 48 hours after a person makes aggregate independent expenditures or disbursements for electioneering communications of \$5,000 or more in an election cycle, the person must file a registration form with the State Board of Elections (SBE). Within 48 hours after a day on which a person makes aggregate independent expenditures or disbursements for electioneering communications of \$10,000 or more in an election cycle, the person must file a report with SBE providing information on the person, the expenditures or disbursements, and persons who made cumulative donations of \$6,000 or more to the person during the period covered by the report. Further, a person who files an independent expenditure or electioneering communication report must file an additional report within 48 hours after a day on which the person makes aggregate independent expenditures or disbursements for electioneering communications of \$10,000 or more following the closing date of the person’s previous report.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Prosecutor's Office; State Board of Elections; Department of Legislative Services

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