

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 711 (Delegate Rosenberg)
Ways and Means

Election Law - Online Platforms - Anonymous Foreign Political Communications

This bill requires online platforms to (1) make reasonable efforts to detect and prevent dissemination of anonymous foreign political communications through the online platform and (2) report anonymous foreign political communications to the State Board of Elections (SBE). The bill also establishes related responsibility and authority of SBE.

Fiscal Summary

State Effect: None. The bill can be implemented with existing resources.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Detection and Prevention of Anonymous Foreign Political Communications

The bill requires an online platform to make reasonable efforts to (1) detect anonymous foreign political communications disseminated through the online platform and (2) prevent the dissemination of anonymous foreign political communications through the online platform.

“Online platform” is defined in existing statute as any public-facing website, web application, or digital application, including a social network, ad network, or search engine,

that (1) has 100,000 or more unique monthly United States visitors or users for a majority of months during the immediately preceding 12 months and (2) receives payment for qualifying paid digital communications.

“Anonymous foreign political communication” means any communication disseminated or attempted to be disseminated by a foreign principal or an agent of a foreign principal through an online platform for a fee or free of charge that:

- does not include a clear and conspicuous disclosure on the face of the communication of the identity of the foreign principal that disseminated the communication or the foreign principal on whose behalf the communication is disseminated;
- is disseminated to 500 or more individuals in the State; and
- the foreign principal or agent of a foreign principal that disseminates the communication intends to in any way influence (1) an election for State or local office; (2) a State or local agency or official in the exercise of the official duties of the agency or official; or (3) public opinion in the State regarding any State or local policy issue.

Reporting to the State Board of Elections

Within 48 hours after an online platform becomes aware that an anonymous foreign political communication has been disseminated through the online platform, the online platform must report to SBE, if known (1) the identity of the foreign principal responsible for the communication; (2) the dates and times that the communication was first disseminated and last disseminated; (3) a digital copy of the content of the communication; (4) an approximate description of the geographic locations to which the communication was disseminated; (5) an approximate description of the audience that received or was targeted to receive the communication; and (6) the total number of impressions generated by the communication.

State Board of Elections’ Responsibility and Authority

Within 24 hours after receiving a report of an anonymous foreign political communication, SBE must (1) make the information available on the SBE website and (2) provide the information to media outlets in the State.

SBE may require an online platform to submit a report at any time to SBE describing the efforts the online platform is making to detect and prevent dissemination of anonymous foreign political communications through the online platform. The report must be submitted within 30 days after the request. If SBE considers the efforts described in the report insufficient, the board may require that additional measures be taken and another

report be submitted within 30 days describing the implementation of the additional measures.

Penalties

In addition to any other sanction provided by law, if an online platform fails to file a required report or fails to implement measures required by SBE, the board may assess a civil penalty against the online platform of up to \$50,000. Penalties are distributed to the Fair Campaign Financing Fund and are the joint and several liability of (1) the person who operates the online platform and (2) any person exercising direction or control over the activities of the person who operates the online platform.

Current Law/Background: Requirements applicable to political communications on online platforms were established in State law in 2018, under Chapters 833 and 834. A person who directly or indirectly requests placement of a “qualifying paid digital communication” on an online platform must expressly notify the online platform at the time the request for placement is made that the communication is a qualifying paid digital communication.

“Qualifying paid digital communication” is defined as any electronic communication that (1) is campaign material; (2) is placed or promoted for a fee on an online platform; (3) is disseminated to 500 or more individuals; and (4) does not propose a commercial transaction.

An online platform must maintain specified records for each qualifying paid digital communication a purchaser requests to disseminate through the online platform and for which the purchaser has provided notice of it being a qualifying paid digital communication. Certain records must be made available to the public (regarding those responsible for the qualifying paid digital communication and the amount paid for its placement) on the Internet, in a clearly identifiable location on the online platform’s website and searchable by purchaser, within 48 hours of the purchase of a qualifying paid digital communication. Other records must be made available to SBE on request (regarding the content of the qualifying paid digital communication, the timing of the dissemination, the geographic and audience focus of the dissemination, and the exposure generated by the dissemination), within 48 hours after a qualifying paid digital communication is first disseminated.

A purchaser of a qualifying paid digital communication must provide the online platform with the information necessary in order for the online platform to maintain the required records, and an online platform may rely in good faith on the information provided by a purchaser. The records made available to and obtained by SBE are not subject to inspection under the Public Information Act.

An online platform must make reasonable efforts to (1) allow SBE to take specified actions, generally relating to implementation and enforcement of the requirements applicable to qualifying paid digital communications, and (2) in accordance with specified federal law, comply with any subpoena issued in connection with an investigation concerning the compliance of a purchaser of a qualifying paid digital communication with the bill's requirements or campaign material authority line requirements.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Board of Elections; Judiciary (Administrative Office of the Courts); State Ethics Commission; Department of Legislative Services

Fiscal Note History: First Reader - February 24, 2019
mag/hlb

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