

SENATE BILL 875

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CF HB 981

By: **Senator Zucker**

Introduced and read first time: February 5, 2018

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Online Electioneering Transparency and Accountability Act**

3 FOR the purpose of altering the definition of “public communication” to include online
4 political advertisements for the purposes of certain provisions of law that require a
5 person who makes independent expenditures of a certain amount to file a certain
6 report; altering the definition of “electioneering communication” to include online
7 political advertisements for the purposes of certain provisions of law that require a
8 person who makes disbursements for electioneering communications of a certain
9 amount to file a certain report; prohibiting a foreign principal from making a
10 donation to certain persons or entities; prohibiting a foreign–influenced corporation
11 from making a contribution or donation to certain persons or entities; requiring
12 certain persons making independent expenditures or disbursements for
13 electioneering communications to retain a copy of an item of campaign material for
14 a certain period of time; requiring an online platform to retain a digital copy of each
15 online political advertisement that the online platform distributes or transmits for a
16 certain period of time; requiring an online platform to maintain account books and
17 records that include certain information relating to online political advertisements
18 for a certain period of time; requiring an online platform to make certain records
19 available for public inspection and provide certain records to the State Board of
20 Elections on request; requiring an online platform to provide certain information to
21 the State Board within a certain period of time if certain persons purchase an online
22 political advertisement; defining certain terms; making a technical correction; and
23 generally relating to disclosure of online political advertisements and campaign
24 material.

25 BY repealing and reenacting, with amendments,
26 Article – Election Law
27 Section 1–101(k), 13–236.1, 13–306(a), 13–307(a) and (e), and 13–403
28 Annotated Code of Maryland
29 (2017 Replacement Volume and 2017 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to
2 Article – Election Law
3 Section 1–101(dd–1) and (dd–2) and 13–403.1
4 Annotated Code of Maryland
5 (2017 Replacement Volume and 2017 Supplement)

6 BY repealing and reenacting, without amendments,
7 Article – Election Law
8 Section 13–306(b) through (e), 13–307(b) through (d), and 13–401
9 Annotated Code of Maryland
10 (2017 Replacement Volume and 2017 Supplement)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
12 That the Laws of Maryland read as follows:

13 **Article – Election Law**

14 1–101.

15 (k) (1) “Campaign material” means any material that:

16 (i) contains text, graphics, or other images;

17 (ii) relates to a candidate, a prospective candidate, or the approval
18 or rejection of a question or prospective question; and

19 (iii) is published or distributed.

20 (2) “Campaign material” includes:

21 **(I) AN ONLINE POLITICAL ADVERTISEMENT;**

22 **[(i)] (II) ANY OTHER** material transmitted by or appearing on the
23 Internet or other electronic medium; and

24 **[(ii)] (III) an oral commercial campaign advertisement.**

25 **(DD–1) “ONLINE PLATFORM” MEANS ANY PUBLIC–FACING WEBSITE, WEB**
26 **APPLICATION, OR DIGITAL APPLICATION, INCLUDING A SOCIAL NETWORK OR**
27 **SEARCH ENGINE, THAT HAS 100,000 OR MORE UNIQUE MONTHLY UNITED STATES**
28 **VISITORS OR USERS FOR A MAJORITY OF MONTHS DURING THE IMMEDIATELY**
29 **PRECEDING 12 MONTHS.**

30 **(DD–2) (1) “ONLINE POLITICAL ADVERTISEMENT” MEANS ANY**
31 **ELECTRONIC COMMUNICATION THAT:**

1 (I) IS PLACED OR PROMOTED FOR A FEE ON AN ONLINE
2 PLATFORM;

3 (II) IS DISTRIBUTED OR TRANSMITTED TO 5,000 OR MORE
4 INDIVIDUALS;

5 (III) REFERS TO A CLEARLY IDENTIFIED CANDIDATE OR BALLOT
6 ISSUE; AND

7 (IV) DOES NOT PROPOSE A COMMERCIAL TRANSACTION.

8 (2) FOR PURPOSES OF THIS SUBSECTION, "CLEARLY IDENTIFIED"
9 MEANS:

10 (I) THE NAME OF A CANDIDATE APPEARS;

11 (II) A PHOTOGRAPH OR DRAWING OF A CANDIDATE APPEARS;
12 OR

13 (III) THE IDENTITY OF A CANDIDATE OR BALLOT ISSUE IS
14 APPARENT BY UNAMBIGUOUS REFERENCE.

15 13-236.1.

16 (a) (1) In this section[, "foreign principal"] THE FOLLOWING WORDS HAVE
17 THE MEANINGS INDICATED.

18 (2) "FOREIGN-INFLUENCED CORPORATION" MEANS A CORPORATION
19 AT LEAST 5% OF WHICH IS OWNED BY FOREIGN NATIONALS.

20 (3) "FOREIGN NATIONAL" HAS THE MEANING STATED IN 52 U.S.C. §
21 30121(B).

22 (4) "FOREIGN PRINCIPAL" has the meaning stated in 22 U.S.C. § 611(b).

23 (b) A foreign principal OR FOREIGN-INFLUENCED CORPORATION may not:

24 (1) make a contribution to a ballot issue committee; or

25 (2) make a donation to [a person that makes independent expenditures or
26 electioneering communications relating to a ballot issue]:

27 (I) A PERSON REQUIRED TO FILE AN INDEPENDENT
28 EXPENDITURE REPORT UNDER § 13-306 OF THIS TITLE;

1 (II) A PERSON REQUIRED TO FILE AN ELECTIONEERING
2 COMMUNICATION REPORT UNDER § 13-307 OF THIS TITLE;

3 (III) A POLITICAL ACTION COMMITTEE REQUIRED TO FILE A
4 DISCLOSURE REPORT UNDER § 13-309.1 OF THIS TITLE; OR

5 (IV) A PARTICIPATING ORGANIZATION REQUIRED TO FILE A
6 PARTICIPATING ORGANIZATION REPORT UNDER § 13-309.2 OF THIS TITLE.

7 13-306.

8 (a) (1) In this section the following words have the meanings indicated.

9 (2) (i) "Donation" means the gift or transfer, or promise of gift or
10 transfer, of money or other thing of value to a person who makes independent expenditures.

11 (ii) "Donation" does not include any amount of money or any other
12 thing of value:

13 1. received by a person in the ordinary course of any trade or
14 business conducted by the person, whether for profit or not for profit, or in the form of
15 investments in the person's business; or

16 2. A. that the donor and the person receiving the money
17 or thing of value expressly agree in writing may not be used for independent expenditures;
18 and

19 B. in the case of a monetary donation, is deposited in a
20 separate bank account that is never used for independent expenditures.

21 (3) "E-mail blast" means a transmission of electronic mail messages of an
22 identical or substantially similar nature to 5,000 or more e-mail accounts simultaneously.

23 (4) "Mass mailing" means a mailing by United States mail or facsimile of
24 more than 500 pieces of mail matter of an identical or substantially similar nature within
25 any 30-day period.

26 (5) (i) "Person" includes an individual, a partnership, a committee, an
27 association, a corporation, a labor organization, or any other organization or group of
28 persons.

29 (ii) "Person" does not include a campaign finance entity organized
30 under Subtitle 2, Part II of this title.

31 (6) (i) "Public communication" means a communication by means of

1 any broadcast television or radio communication, cable television communication, satellite
2 television or radio communication, newspaper, magazine, outdoor advertising facility, mass
3 mailing, e-mail blast, text blast, **ONLINE POLITICAL ADVERTISEMENT**, or telephone
4 bank to the general public, or any other form of general public political advertising.

5 (ii) "Public communication" does not include:

6 1. a news story, a commentary, or an editorial disseminated
7 by a broadcasting station, including a cable television operator, programmer, or producer,
8 satellite television or radio provider, Web site, newspaper, magazine, or other periodical
9 publication, including any Internet or electronic publication, that is not controlled by a
10 candidate or political party;

11 2. an internal membership communication by a business or
12 other entity to its stockholders or members and executive and administrative personnel
13 and their immediate families, or by a membership entity, as defined under § 13-243 of this
14 title, to its members, executive and administrative personnel and their immediate families;
15 or

16 3. a candidate debate or forum.

17 (7) "Telephone bank" means more than 500 telephone calls of an identical
18 or substantially similar nature within any 30-day period.

19 (8) "Text blast" means a transmission of text messages of an identical or
20 substantially similar nature to 5,000 or more telephone numbers simultaneously.

21 (b) Within 48 hours after a person makes aggregate independent expenditures of
22 \$5,000 or more in an election cycle for campaign material that is a public communication,
23 the person shall file a registration form with the State Board.

24 (c) Within 48 hours after a day on which a person makes aggregate independent
25 expenditures of \$10,000 or more in an election cycle for campaign material that is a public
26 communication, the person shall file an independent expenditure report with the State
27 Board.

28 (d) A person who files an independent expenditure report under subsection (c) of
29 this section shall file an additional independent expenditure report with the State Board
30 within 48 hours after a day on which the person makes aggregate independent
31 expenditures of \$10,000 or more for campaign material that is a public communication
32 following the closing date of the person's previous independent expenditure report.

33 (e) An independent expenditure report shall include the following information:

34 (1) the identity of the person making the independent expenditures and of
35 the person exercising direction or control over the activities of the person making the
36 independent expenditures;

1 (2) the business address of the person making the independent
2 expenditures;

3 (3) the amount and date of each independent expenditure during the period
4 covered by the report and the person to whom the expenditure was made;

5 (4) the candidate or ballot issue to which the independent expenditure
6 relates and whether the independent expenditure supports or opposes that candidate or
7 ballot issue; and

8 (5) the identity of each person who made cumulative donations of \$6,000
9 or more to the person making the independent expenditures during the period covered by
10 the report.

11 13–307.

12 (a) (1) In this section the following words have the meanings indicated.

13 (2) (i) “Donation” means the gift or transfer, or promise of gift or
14 transfer, of money or other thing of value to a person that makes disbursements for
15 electioneering communications.

16 (ii) “Donation” does not include any amount of money or any other
17 thing of value:

18 1. received by a person in the ordinary course of any trade or
19 business conducted by the person, whether for profit or not for profit, or in the form of
20 investments in the person’s business; or

21 2. A. that the donor and the person receiving the money
22 or thing of value expressly agree in writing may not be used for electioneering
23 communications; and

24 B. in the case of a monetary donation, is deposited in a
25 separate bank account that is never used for electioneering communications.

26 (3) (i) “Electioneering communication” means a broadcast television or
27 radio communication, a cable television communication, a satellite television or radio
28 communication, a mass mailing, an e–mail blast, a text blast, a telephone bank, **AN ONLINE**
29 **POLITICAL ADVERTISEMENT**, or an advertisement in a print publication that:

30 1. refers to a clearly identified candidate or ballot issue;

31 2. is made within 60 days of an election day on which the
32 candidate or ballot issue is on the ballot;

1 3. is capable of being received by:

2 A. 50,000 or more individuals in the constituency where the
3 candidate or ballot issue is on the ballot, if the communication is transmitted by television
4 or radio; or

5 B. 5,000 or more individuals in the constituency where the
6 candidate or ballot issue is on the ballot, if the communication is a mass mailing, an e-mail
7 blast, a text blast, a telephone bank, or an advertisement in a print publication; and

8 4. is not made in coordination with, or at the request or
9 suggestion of, a candidate, a campaign finance entity of a candidate, an agent of a
10 candidate, or a ballot issue committee.

11 (ii) “Electioneering communication” does not include:

12 1. an independent expenditure;

13 2. a news story, a commentary, or an editorial disseminated
14 by a broadcasting station, including a cable television operator, programmer, or producer,
15 or satellite television or radio provider that is not controlled by a candidate or political
16 party;

17 3. a candidate debate or forum;

18 4. an internal membership communication by a business or
19 other entity to its stockholders or members and executive and administrative personnel
20 and their immediate families, or by a membership entity, as defined under § 13-243 of this
21 title, to its members, executive and administrative personnel and their immediate families;
22 or

23 5. a communication that proposes a commercial transaction.

24 (iii) For purposes of this paragraph, “clearly identified” means:

25 1. the name of a candidate appears;

26 2. a photograph or drawing of a candidate appears; or

27 3. the identity of a candidate or ballot issue is apparent by
28 unambiguous reference.

29 (4) “E-mail blast” means a transmission of electronic mail messages of an
30 identical or substantially similar nature to 5,000 or more e-mail accounts simultaneously.

31 (5) “Mass mailing” means a mailing by United States mail or facsimile of
32 more than 5,000 pieces of mail matter of an identical or substantially similar nature within

1 any 30-day period.

2 (6) (i) "Person" includes an individual, a partnership, a committee, an
3 association, a corporation, a labor organization, or any other organization or group of
4 persons.

5 (ii) "Person" does not include a campaign finance entity organized
6 under Subtitle 2, Part II of this title.

7 (7) "Telephone bank" means more than 5,000 telephone calls of an identical
8 or substantially similar nature within any 30-day period.

9 (8) "Text blast" means a transmission of text messages of an identical or
10 substantially similar nature to 5,000 or more telephone numbers simultaneously.

11 (b) Within 48 hours after a person makes aggregate disbursements of \$5,000 or
12 more in an election cycle for electioneering communications, the person shall file a
13 registration form with the State Board.

14 (c) Within 48 hours after a day on which a person makes aggregate
15 disbursements of \$10,000 or more in an election cycle for electioneering communications,
16 the person shall file an electioneering communication report with the State Board.

17 (d) A person who files an electioneering communication report under subsection
18 (c) of this section shall file an additional electioneering communication report with the
19 State Board within 48 hours after a day on which the person makes aggregate
20 disbursements of \$10,000 or more for electioneering communications following the closing
21 date of the person's previous electioneering communication report.

22 (e) An electioneering communication report shall include the following
23 information:

24 (1) the identity of the person making disbursements for electioneering
25 communications and of the person exercising direction or control over the activities of the
26 person making the disbursements for electioneering communications;

27 (2) the business address of the person making the disbursements for
28 electioneering communications;

29 (3) the amount and date of each disbursement for electioneering
30 communications during the period covered by the report and the person to whom the
31 disbursement was made;

32 (4) the candidate or ballot issue to which the electioneering
33 communications relate; **AND**

34 (5) the identity of each person who made cumulative donations of \$6,000

1 or more to the person making the disbursements for electioneering communications during
2 the period covered by the report.

3 13-401.

4 (a) (1) Except as otherwise provided in this section, each item of campaign
5 material shall contain, set apart from any other message, an authority line that states:

6 (i) as to campaign material published or distributed by a campaign
7 finance entity:

8 1. the name and address of the treasurer of each campaign
9 finance entity responsible for the campaign material; and

10 2. as to each treasurer named under item 1 of this item, the
11 name of each campaign finance entity for which the treasurer is acting; and

12 (ii) as to campaign material published or distributed by any other
13 person, the name and address of the person responsible for the campaign material.

14 (2) The authority line may omit an address that is on file with the State
15 Board or a local board.

16 (3) If the campaign material is too small to include all the information
17 specified in paragraph (1) of this subsection in a legible manner, the authority line need
18 only contain the name and title of the treasurer or other person responsible for it.

19 (4) The authority line for campaign material that is a commercial
20 advertisement need only contain the information specified in paragraphs (1) and (2) of this
21 subsection for one campaign finance entity or other person responsible for the
22 advertisement.

23 (b) Campaign material that is published or distributed in support of or in
24 opposition to a candidate, but is not authorized by the candidate, shall include the following
25 statement:

26 "This message has been authorized and paid for by (name of payor or any
27 organization affiliated with the payor), (name and title of treasurer or president). This
28 message has not been authorized or approved by any candidate."

29 13-403.

30 (a) (1) Subject to paragraph (2) of this subsection, each campaign finance
31 entity, **EACH PERSON REQUIRED TO FILE AN INDEPENDENT EXPENDITURE REPORT**
32 **UNDER § 13-306 OF THIS TITLE, AND EACH PERSON REQUIRED TO FILE AN**
33 **ELECTIONEERING COMMUNICATION REPORT UNDER § 13-307 OF THIS TITLE THAT**
34 **IS** responsible for, publisher of, and distributor of, an item of campaign material shall keep

1 a sample copy of the item for at least 1 year after the general election next following the
2 date when the item was published or distributed.

3 (2) For each item of campaign material disseminated through the Internet,
4 the sample copy shall be:

5 (i) a paper facsimile; or

6 (ii) a copy on an electronic medium that can be produced as a paper
7 facsimile on request.

8 (b) Subsection (a) of this section does not apply to a billboard or a sign.

9 **13-403.1.**

10 (A) (1) **AN ONLINE PLATFORM SHALL:**

11 (I) **RETAIN A DIGITAL COPY OF EACH ONLINE POLITICAL**
12 **ADVERTISEMENT THAT THE ONLINE PLATFORM DISTRIBUTES OR TRANSMITS; AND**

13 (II) **MAINTAIN ACCOUNT BOOKS AND RECORDS THAT INCLUDE:**

14 1. **THE NAME AND ADDRESS OF EACH PERSON WHO**
15 **PURCHASES AN ONLINE POLITICAL ADVERTISEMENT FROM THE ONLINE PLATFORM;**
16 **AND**

17 2. **THE COST AND METHOD OF PAYMENT FOR THE**
18 **ONLINE POLITICAL ADVERTISEMENT.**

19 (2) **AN ONLINE PLATFORM SHALL RETAIN THE RECORDS REQUIRED**
20 **UNDER PARAGRAPH (1) OF THIS SUBSECTION FOR AT LEAST 1 YEAR AFTER THE**
21 **GENERAL ELECTION NEXT FOLLOWING THE DATE WHEN THE ONLINE PLATFORM**
22 **DISTRIBUTED OR TRANSMITTED THE ONLINE POLITICAL ADVERTISEMENT TO**
23 **WHICH THE RECORDS RELATE.**

24 (3) **THE RECORDS REQUIRED UNDER PARAGRAPH (1) OF THIS**
25 **SUBSECTION SHALL BE:**

26 (I) **AVAILABLE FOR PUBLIC INSPECTION AT THE OFFICES OF**
27 **THE ONLINE PLATFORM DURING NORMAL BUSINESS HOURS; AND**

28 (II) **PROVIDED TO THE STATE BOARD ON REQUEST.**

29 (B) (1) **IN THIS SUBSECTION, “FOREIGN PRINCIPAL” HAS THE MEANING**

1 STATED IN 22 U.S.C. § 611(B).

2 (2) IF A FOREIGN PRINCIPAL, A PERSON USING A FOREIGN INTERNET
3 PROTOCOL ADDRESS, OR A PERSON USING FOREIGN CURRENCY PURCHASES AN
4 ONLINE POLITICAL ADVERTISEMENT, THE ONLINE PLATFORM USED TO DISTRIBUTE
5 OR TRANSMIT THE ONLINE POLITICAL ADVERTISEMENT SHALL PROVIDE THE
6 FOLLOWING TO THE STATE BOARD WITHIN 48 HOURS AFTER THE ONLINE POLITICAL
7 ADVERTISEMENT IS DISTRIBUTED OR TRANSMITTED:

8 (I) A DIGITAL COPY OF THE ONLINE POLITICAL
9 ADVERTISEMENT; AND

10 (II) THE AMOUNT PAID TO THE ONLINE PLATFORM TO
11 DISTRIBUTE OR TRANSMIT THE ONLINE POLITICAL ADVERTISEMENT.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
13 1, 2018.