
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 852 Session of
2021

INTRODUCED BY MULLERY, SCHLOSSBERG, SANCHEZ, HILL-EVANS,
NEILSON, CIRESI, JAMES, D. WILLIAMS, QUINN AND WARREN,
MARCH 10, 2021

REFERRED TO COMMITTEE ON STATE GOVERNMENT, MARCH 10, 2021

AN ACT

1 Amending the act of June 3, 1937 (P.L.1333, No.320), entitled
2 "An act concerning elections, including general, municipal,
3 special and primary elections, the nomination of candidates,
4 primary and election expenses and election contests; creating
5 and defining membership of county boards of elections;
6 imposing duties upon the Secretary of the Commonwealth,
7 courts, county boards of elections, county commissioners;
8 imposing penalties for violation of the act, and codifying,
9 revising and consolidating the laws relating thereto; and
10 repealing certain acts and parts of acts relating to
11 elections," in primary and election expenses, further
12 providing for definitions, providing for disclosure of
13 electioneering communications and for registration required
14 and further providing for contributions or expenditures by
15 national banks, corporations or unincorporated associations.

16 The General Assembly of the Commonwealth of Pennsylvania
17 hereby enacts as follows:

18 Section 1. Section 1621 of the act of June 3, 1937
19 (P.L.1333, No.320), known as the Pennsylvania Election Code, is
20 amended by adding definitions to read:

21 Section 1621. Definitions.--As used in this article, the
22 following words have the following meanings:

23 * * *

24 (n) The words "direct mail" shall mean a service provided by

1 the United States Postal Service which allows mailings to an
2 entire mail route, as opposed to individual addresses, thereby
3 allowing a person to target entire cities, zip codes,
4 neighborhoods or individual mail routes within a thirty-day
5 period or other specific period of time as prescribed by the
6 Secretary of the Commonwealth by regulation.

7 (o) The words "electioneering communication" shall mean the
8 following:

9 (1) Any broadcast, cable, satellite, direct mail, Internet,
10 e-mail, phone bank or billboard communication which:

11 (i) refers to a clearly identified candidate;

12 (ii) is publicly distributed;

13 (iii) is targeted to the relevant electorate; and

14 (iv) is made within sixty (60) days before an election for
15 the office sought by the candidate or thirty (30) days before a
16 primary election of a political party that has authority to
17 nominate a candidate for the office sought by the candidate.

18 (2) A communication that meets the requirements of paragraph
19 (1) and is a public communication that refers to a clearly
20 identified candidate, promotes or supports a candidate, attacks
21 or opposes a candidate or that promotes or supports a referendum
22 or ballot question or attacks or opposes a referendum or ballot
23 question, regardless of whether the communication expressly
24 advocates a vote for or against a candidate or a referendum or
25 ballot question.

26 (3) The term shall not include:

27 (i) A communication appearing in a news story, commentary or
28 editorial printed in a newspaper, magazine or other print media
29 or posted on the Internet or distributed through the facilities
30 of any broadcasting station, unless such print media or other

1 facilities are owned or controlled by any political party,
2 political committee or candidate.

3 (ii) A communication which constitutes an expenditure or an
4 independent expenditure under this act.

5 (iii) A communication which constitutes a candidate debate
6 or forum or which solely promotes such a debate or forum and is
7 made by or on behalf of the person sponsoring the debate or
8 forum.

9 (iv) A communication made regarding a candidate for any
10 local office, including the office of judge of the court of
11 common pleas.

12 (v) A communication made regarding a candidate for any
13 political party office.

14 (vi) Any other communication exempted under regulations as
15 the Secretary of the Commonwealth may promulgate to ensure
16 appropriate implementation of this article.

17 (p) The words "Internet communication" shall mean online
18 display advertising, online voter file targeting and other such
19 communications over the Internet, including, but not limited to,
20 communications via podcasts, e-mail, instant messaging, forums,
21 social networking such as Facebook, Instagram and Snapchat and
22 VoIP programs.

23 (q) The words "mass mail" shall mean a service provided by
24 the United States Postal Service which allows the mailing of
25 more than five hundred (500) pieces of mail of an identical or
26 substantially similar nature within any thirty-day period.

27 (r) The words "public communication" shall mean a
28 communication directed to the general public by means of any of
29 the following:

30 (1) Broadcast or cable television or satellite television or

1 radio.

2 (2) Print communication published or proposed to be
3 published, including communications in a newspaper or magazine
4 or on a billboard.

5 (3) Mass mail.

6 (4) Phone bank.

7 (5) Direct mail.

8 (6) Internet communication.

9 (7) Any other form of political communication or political
10 advertising directed to the general public.

11 (s) The words "publicly distributed" shall mean an
12 electioneering communication which is aired, published, posted
13 or otherwise disseminated to the general public.

14 (t) The words "targeting to relevant electorate" shall mean
15 a communication which refers to a clearly identified candidate,
16 if the communication can be received by:

17 (1) fifty thousand (50,000) or more persons in this
18 Commonwealth in the case of a presidential candidate or a
19 candidate for a Statewide office;

20 (2) fifteen thousand (15,000) or more persons in the
21 district the candidate seeks to represent in the case of a
22 candidate for the Senate; or

23 (3) five thousand (5,000) or more persons in the district
24 the candidate seeks to represent in the case of a candidate for
25 the House of Representatives.

26 (u) The words "online display advertising" shall mean a form
27 of advertising which conveys a candidate's message visually
28 using text, logos, animation, videos, photographs or other
29 graphics to target the relevant electorate.

30 (v) The words "online voter file targeting" shall mean a

1 form of political campaign advertising that uses voter files to
2 identify, target and communicate with potential supporters to
3 influence their candidate choice, mobilize to turn out to vote,
4 or both.

5 Section 2. The act is amended by adding sections to read:

6 Section 1626.2. Disclosure of Electioneering
7 Communications.--The following apply:

8 (a) (1) Notwithstanding any other provision of law, a
9 nonprofit organization that makes a disbursement for the direct
10 costs of an electioneering communication in an aggregate amount
11 of twenty-five thousand dollars (\$25,000) or more during any
12 calendar year shall, within twenty-four (24) hours of the
13 disclosure date of the disbursement, file with the appropriate
14 supervisor a disclosure statement containing the information
15 required under subsection (b).

16 (2) If a twenty-four-hour period under paragraph (1) ends on
17 a Saturday, Sunday, holiday or at any time after the close of
18 business, the statement shall be filed on the next business day.

19 (b) Each disclosure statement filed under this section shall
20 be made under penalty of perjury and shall contain the following
21 information:

22 (1) The name and address of the nonprofit organization.

23 (2) The name and address of all related or affiliated
24 nonprofit organizations, political committees or other persons
25 and the nature of the relationship or affiliation.

26 (3) The names, addresses and titles of the executives,
27 directors and officers of the nonprofit organization or, if it
28 has no executives, directors or officers, the names, addresses
29 and titles of its responsible leaders.

30 (4) The name of the person designated as the treasurer of

1 the nonprofit organization.

2 (5) The name, office sought and party affiliation of each
3 candidate whom the nonprofit organization is supporting or
4 opposing, if the nonprofit organization contributes directly to
5 a candidate and, if donating to a political committee, the name
6 and address of that political committee and the name of the
7 representative of the political committee to whom the
8 disbursement was made.

9 (6) If the person making the disbursement is not an
10 individual, the name and address of the person's principal place
11 of business and the name and address of the entity or person
12 making the disbursement.

13 (7) The ballot question or referendum, if any, and whether
14 the nonprofit organization is in favor of or opposed to the
15 question or referendum.

16 (8) The amount of each disbursement of more than two hundred
17 fifty dollars (\$250) during the period covered by the statement
18 and the name of the person to whom the disbursement was made.

19 (9) If the disbursements were paid out of a segregated bank
20 account which consists of money contributed solely by
21 individuals who are United States citizens or nationals or
22 lawfully admitted for permanent residence, as defined in the
23 Immigration and Nationality Act (66 Stat. 163, 8 U.S.C. § 1101
24 et seq.), the names and addresses of all contributors who
25 contributed an aggregate amount of one thousand dollars (\$1,000)
26 or more during the period beginning on the first day of the
27 preceding calendar year and ending on the disclosure date.
28 Nothing in this paragraph shall be construed to prohibit the use
29 of money in the segregated account for a purpose other than
30 electioneering communications.

1 (10) If the disbursements were paid out of money not
2 described in paragraph (9), the names and addresses of all
3 contributors who contributed an aggregate amount of one thousand
4 dollars (\$1,000) or more to the person making the disbursement
5 during the period beginning on the first day of the preceding
6 calendar year and ending on the disclosure date.

7 (11) Other information as the Secretary of the Commonwealth
8 may by rule or regulation prescribe to effectuate the
9 implementation of this section.

10 (c) The person designated as treasurer by a nonprofit
11 organization shall maintain books of account accurately
12 reflecting all disbursements for electioneering communications
13 on a current basis in accordance with regulations adopted and
14 promulgated by the Secretary of the Commonwealth.

15 (d) Any requirement to report disbursements for
16 electioneering communications under this section shall be in
17 addition to any other reporting requirement under this act.

18 (e) Nothing in this section may be construed to establish,
19 modify or otherwise affect the definition of "political
20 activities" or "electioneering activities," including the
21 definition of "participating in, intervening in or influencing
22 or attempting to influence a political campaign on behalf of or
23 in opposition to any candidate for public office," for purposes
24 of the Internal Revenue Code of 1986 (Public Law 99-514, 26
25 U.S.C. § 1 et seq.).

26 (f) For purposes of this section, the words "disclosure
27 date" shall mean the first date during any calendar year by
28 which a person has made disbursements for the direct cost of an
29 electioneering communication aggregating in excess of twenty-
30 five thousand dollars (\$25,000) and any other date during such

1 calendar year by which a person has made disbursements for the
2 direct costs of an electioneering communication aggregating in
3 excess of twenty-five thousand dollars (\$25,000) since the most
4 recent disclosure date for the calendar year.

5 Section 1626.3. Registration Required.--(a) (1)

6 Notwithstanding any provision of this act or any other law or
7 regulation, a nonprofit organization that has the expectation of
8 making contributions or expenditures of twenty-five thousand
9 dollars (\$25,000) or more in a calendar year in support of or in
10 opposition to a candidate, a question appearing on the ballot or
11 a referendum shall file a statement of organization with the
12 Secretary of the Commonwealth in accordance with this section.

13 (2) A statement filed by a nonprofit organization in
14 accordance with paragraph (1) shall disclose:

15 (i) The name, address, telephone number or electronic mail
16 address of the nonprofit organization.

17 (ii) The purposes of the nonprofit organization.

18 (iii) The names, addresses and titles of the nonprofit
19 organization's officers or, if the nonprofit organization has no
20 officers, the names, addresses and titles of the nonprofit
21 organization's responsible leaders.

22 (iv) The name, office sought and party affiliation of each
23 candidate whom the nonprofit organization is supporting or
24 opposing and, if the nonprofit organization is supporting or
25 opposing the entire ticket of a political party, the name of the
26 political party.

27 (v) The ballot question or referendum that the nonprofit
28 organization supports or opposes, if any, and whether the
29 nonprofit organization is in favor of or opposed to that ballot
30 question or referendum.

1 (vi) The name and address of each person in this
2 Commonwealth who has made one or more contributions in the
3 aggregate of more than twenty-five dollars (\$25) to the
4 nonprofit organization during the current calendar year,
5 together with the monetary value and date of each contribution.

6 (vii) The name, address and employer of each person in this
7 Commonwealth who has made one or more contributions in the
8 aggregate of more than two thousand five hundred fifty dollars
9 (\$2,550) to the nonprofit organization during the current
10 calendar year, together with the monetary value and date of each
11 contribution.

12 (viii) The name and address of each person in this
13 Commonwealth to whom an expenditure was made by the nonprofit
14 organization with respect to a candidate or political committee
15 in the aggregate amount of more than fifty dollars (\$50), the
16 amount, date and purpose of the expenditure and the total sum of
17 the expenditures.

18 (ix) Other information as the Secretary of the Commonwealth
19 may prescribe by regulation.

20 (b) Each statement shall be filed no later than the tenth
21 day of the month following a month in which a contribution or
22 other expenditure reportable under subsection (a) is made. A
23 nonprofit organization incurring an obligation to file
24 additional statements in a calendar year may satisfy the
25 obligation by timely filing reports that supplement previously
26 filed information. Statements and reports filed by a nonprofit
27 organization in accordance with this section may be filed
28 electronically.

29 (c) The secretary may promulgate rules or regulations to
30 carry out the requirements of this section.

1 Section 3. Section 1633 of the act is amended by adding a
2 subsection to read:

3 Section 1633. Contributions or Expenditures by National
4 Banks, Corporations or Unincorporated Associations.--* * *

5 (e) (1) The following apply:

6 (i) A communication made by an entity described in
7 subsection (a) shall be considered an electioneering
8 communication if the entity directly or indirectly makes any
9 contribution or expenditure in connection with the costs of an
10 electioneering communication.

11 (ii) A section 501(c)(4) organization that derives money
12 from business activities or receives money from any entity
13 described in subsection (a) shall be considered to have paid for
14 an electioneering communication unless the 501(c)(4)
15 organization paid for the communication out of a segregated
16 account to which only individuals can contribute, as described
17 in section 1626.2(b)(9).

18 (iii) An electioneering communication shall not include a
19 communication by a section 501(c)(4) organization or a political
20 organization, as defined in section 527(e)(1) of the Internal
21 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 527(e))
22 made under section 1626.2(b)(9) or (10), if the communication is
23 paid for exclusively with money provided directly by individuals
24 who are United States citizens or nationals or lawfully admitted
25 for permanent residence, as defined in section 101(a)(20) of the
26 Immigration and Nationality Act (66 Stat. 163, 8 U.S.C. § 1101
27 et seq.). For purposes of this subparagraph, the term "provided
28 directly by individuals" does not include money provided by an
29 entity described in subsection (a).

30 (2) Nothing in this subsection shall be construed to

1 authorize an organization exempt from taxation under section
2 501(a) of the Internal Revenue Code of 1986 to carry out any
3 activity which is prohibited under Federal law.

4 (3) An entity described in subsection (a) is prohibited from
5 expressly advocating for the election or defeat of a candidate.

6 (4) An electioneering communication includes indicia of
7 express advocacy or its functional equivalent if it mentions any
8 election, candidate, opposing candidate, political party or
9 voting by the general public or takes a position on any
10 candidate's or office holder's character, qualifications or
11 fitness for office. Content supporting a determination that a
12 communication has an interpretation other than as an appeal to
13 vote for or against a clearly identified candidate includes
14 content that:

15 (i) focuses on a public policy issue and either urges a
16 candidate to take a position on the issue or urges the public to
17 contact the candidate to take a position on the issue;

18 (ii) proposes a commercial transaction, such as purchase of
19 a book, video or other product or service, or such as
20 attendance, for a fee, at a film exhibition or other event; or

21 (iii) includes a call to action or other appeal that,
22 interpreted in conjunction with the rest of the communication,
23 urges an action other than voting for or against or contributing
24 to a clearly identified candidate or political party.

25 (5) A person who executes a contract to make a disbursement
26 of money for the direct cost of an electioneering communication
27 shall be considered as the party that made the disbursement.

28 (6) For purposes of this subsection, the following words and
29 phrases shall have the meaning ascribed in this paragraph:

30 (i) The words "section 501(c)(4) organization" shall mean an

1 organization which:

2 (A) is described in section 501(c)(4) of the Internal
3 Revenue Code of 1986 and is exempt from taxation under section
4 501(a) of the Internal Revenue Code of 1986; or

5 (B) has submitted an application to the Internal Revenue
6 Service for determination of its status as an organization
7 described in clause (A).

8 (ii) The words "targeted communication" shall mean an
9 electioneering communication as defined in section 1621(o),
10 which is targeted to the relevant electorate.

11 Section 4. This act shall take effect in 60 days.