

HOUSE BILL 768

G1

8lr1763

By: **Delegate Rosenberg**

Introduced and read first time: February 1, 2018

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Election Law – Online Political Advertisements and Campaign Material –**
3 **Disclosure**

4 FOR the purpose of altering the definition of “public communication” to include online
5 political advertisements for the purposes of certain provisions of law that require a
6 person who makes independent expenditures of a certain amount to file a certain
7 report; altering the definition of “electioneering communication” to include certain
8 online political advertisements for the purposes of certain provisions of law that
9 require a person who makes disbursements for electioneering communications of a
10 certain amount to file a certain report; requiring certain persons making
11 independent expenditures or disbursements for electioneering communications to
12 retain a copy of an item of campaign material for a certain period of time; requiring
13 an online platform to retain a digital copy of each online political advertisement that
14 the online platform distributes or transmits; requiring an online platform to
15 maintain account books and records that include certain information relating to
16 online political advertisements; requiring a person that purchases an online political
17 advertisement to provide certain information to the online platform that distributes
18 or transmits the online political advertisement; requiring an online platform to make
19 certain records available for online public inspection in machine-readable format
20 during a certain period; providing that a person that executes a contract to purchase
21 an online political advertisement is considered to have purchased an online political
22 advertisement; requiring an online platform to establish an online interface that
23 allows the public to search certain records in a certain manner; defining certain
24 terms; making a technical correction; and generally relating to the disclosure of
25 online political advertisements and campaign material.

26 BY repealing and reenacting, with amendments,
27 Article – Election Law
28 Section 1–101(k), 13–306(a), 13–307(a) and (e), and 13–403
29 Annotated Code of Maryland
30 (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 500,000 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 13-306.

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

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

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

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

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

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

29 (3) "E-mail blast" means a transmission of electronic mail messages of an

1 identical or substantially similar nature to 5,000 or more e-mail accounts simultaneously.

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

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

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

10 (6) (i) "Public communication" means a communication by means of
11 any broadcast television or radio communication, cable television communication, satellite
12 television or radio communication, newspaper, magazine, outdoor advertising facility, mass
13 mailing, e-mail blast, text blast, **ONLINE POLITICAL ADVERTISEMENT**, or telephone
14 bank to the general public, or any other form of general public political advertising.

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

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

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

26 3. a candidate debate or forum.

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

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

31 (b) Within 48 hours after a person makes aggregate independent expenditures of
32 \$5,000 or more in an election cycle for campaign material that is a public communication,
33 the person shall file a registration form with the State Board.

34 (c) Within 48 hours after a day on which a person makes aggregate independent
35 expenditures of \$10,000 or more in an election cycle for campaign material that is a public

1 communication, the person shall file an independent expenditure report with the State
2 Board.

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

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

9 (1) the identity of the person making the independent expenditures and of
10 the person exercising direction or control over the activities of the person making the
11 independent expenditures;

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

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

16 (4) the candidate or ballot issue to which the independent expenditure
17 relates and whether the independent expenditure supports or opposes that candidate or
18 ballot issue; and

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

22 13-307.

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

24 (2) (i) "Donation" means the gift or transfer, or promise of gift or
25 transfer, of money or other thing of value to a person that makes disbursements for
26 electioneering communications.

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

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

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

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

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

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

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

10 3. is capable of being received by:

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

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

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

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

21 1. an independent expenditure;

22 2. a news story, a commentary, or an editorial disseminated
23 by a broadcasting station, including a cable television operator, programmer, or producer,
24 or satellite television or radio provider that is not controlled by a candidate or political
25 party;

26 3. a candidate debate or forum;

27 4. an internal membership communication by a business or
28 other entity to its stockholders or members and executive and administrative personnel
29 and their immediate families, or by a membership entity, as defined under § 13-243 of this
30 title, to its members, executive and administrative personnel and their immediate families;
31 or

32 5. a communication that proposes a commercial transaction.

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

2 1. the name of a candidate appears;

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

4 3. the identity of a candidate or ballot issue is apparent by
5 unambiguous reference.

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

8 (5) “Mass mailing” means a mailing by United States mail or facsimile of
9 more than 5,000 pieces of mail matter of an identical or substantially similar nature within
10 any 30-day period.

11 (6) (i) “Person” includes an individual, a partnership, a committee, an
12 association, a corporation, a labor organization, or any other organization or group of
13 persons.

14 (ii) “Person” does not include a campaign finance entity organized
15 under Subtitle 2, Part II of this title.

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

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

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

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

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

31 (e) An electioneering communication report shall include the following
32 information:

33 (1) the identity of the person making disbursements for electioneering

1 communications and of the person exercising direction or control over the activities of the
2 person making the disbursements for electioneering communications;

3 (2) the business address of the person making the disbursements for
4 electioneering communications;

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

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

10 (5) the identity of each person who made cumulative donations of \$6,000
11 or more to the person making the disbursements for electioneering communications during
12 the period covered by the report.

13 13-401.

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

16 (i) as to campaign material published or distributed by a campaign
17 finance entity:

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

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

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

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

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

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

33 (b) Campaign material that is published or distributed in support of or in

1 opposition to a candidate, but is not authorized by the candidate, shall include the following
2 statement:

3 “This message has been authorized and paid for by (name of payor or any
4 organization affiliated with the payor), (name and title of treasurer or president). This
5 message has not been authorized or approved by any candidate.”

6 13-403.

7 (a) (1) Subject to paragraph (2) of this subsection, each campaign finance
8 entity, **EACH PERSON REQUIRED TO FILE AN INDEPENDENT EXPENDITURE REPORT**
9 **UNDER § 13-306 OF THIS TITLE, AND EACH PERSON REQUIRED TO FILE AN**
10 **ELECTIONEERING COMMUNICATION REPORT UNDER § 13-307 OF THIS TITLE THAT**
11 **IS** responsible for, publisher of, and distributor of, an item of campaign material shall keep
12 a sample copy of the item for at least 1 year after the general election next following the
13 date when the item was published or distributed.

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

16 (i) a paper facsimile; or

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

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

20 **13-403.1.**

21 **(A) AN ONLINE PLATFORM SHALL:**

22 **(1) RETAIN A DIGITAL COPY OF EACH ONLINE POLITICAL**
23 **ADVERTISEMENT THAT THE ONLINE PLATFORM DISTRIBUTES OR TRANSMITS; AND**

24 **(2) MAINTAIN ACCOUNT BOOKS AND RECORDS THAT INCLUDE THE**
25 **FOLLOWING INFORMATION:**

26 **(I) FOR EACH ONLINE POLITICAL ADVERTISEMENT**
27 **PURCHASED BY A POLITICAL COMMITTEE:**

28 **1. THE NAME OF THE POLITICAL COMMITTEE; AND**

29 **2. THE TREASURER OF THE POLITICAL COMMITTEE;**

30 **(II) FOR EACH ONLINE POLITICAL ADVERTISEMENT**

1 PURCHASED BY A PERSON OTHER THAN A POLITICAL COMMITTEE:

2 1. THE NAME, ADDRESS, AND PHONE NUMBER OF THE
3 PERSON;

4 2. THE NAME OF AN INDIVIDUAL WHO IS AUTHORIZED TO
5 SPEAK FOR THE PERSON; AND

6 3. THE IDENTITY OF THE INDIVIDUALS EXERCISING
7 DIRECTION OR CONTROL OVER THE ACTIVITIES OF THE PERSON, INCLUDING THE
8 CHIEF EXECUTIVE OFFICER OR BOARD OF DIRECTORS, IF APPLICABLE;

9 (III) THE CANDIDATE OR BALLOT ISSUE TO WHICH THE ONLINE
10 POLITICAL ADVERTISEMENT RELATES AND WHETHER THE ONLINE POLITICAL
11 ADVERTISEMENT SUPPORTS OR OPPOSES THAT CANDIDATE OR BALLOT ISSUE;

12 (IV) A DESCRIPTION OF THE AUDIENCE TARGETED BY THE
13 ONLINE POLITICAL ADVERTISEMENT;

14 (V) THE NUMBER OF VIEWS GENERATED FROM THE ONLINE
15 POLITICAL ADVERTISEMENT;

16 (VI) THE DATES AND TIMES THAT THE ONLINE POLITICAL
17 ADVERTISEMENT WAS FIRST DISPLAYED AND LAST DISPLAYED; AND

18 (VII) THE AVERAGE RATE CHARGED FOR THE ONLINE POLITICAL
19 ADVERTISEMENT.

20 (B) A PERSON THAT PURCHASES AN ONLINE POLITICAL ADVERTISEMENT
21 SHALL PROVIDE THE ONLINE PLATFORM THAT DISTRIBUTES OR TRANSMITS THE
22 ONLINE POLITICAL ADVERTISEMENT WITH THE INFORMATION NECESSARY FOR THE
23 ONLINE PLATFORM TO COMPLY WITH SUBSECTION (A) OF THIS SECTION.

24 (C) AN ONLINE PLATFORM SHALL MAKE THE RECORDS REQUIRED UNDER
25 SUBSECTION (A) OF THIS SECTION AVAILABLE FOR ONLINE PUBLIC INSPECTION IN
26 A MACHINE-READABLE FORMAT:

27 (1) AS SOON AS POSSIBLE AFTER AN ONLINE POLITICAL
28 ADVERTISEMENT IS PURCHASED; AND

29 (2) FOR AT LEAST 1 YEAR AFTER THE GENERAL ELECTION NEXT
30 FOLLOWING THE DATE WHEN THE ONLINE PLATFORM DISTRIBUTED OR
31 TRANSMITTED THE ONLINE POLITICAL ADVERTISEMENT TO WHICH THE RECORDS

1 RELATE.

2 (D) AN ONLINE PLATFORM SHALL ESTABLISH AN ONLINE INTERFACE THAT
3 ALLOWS THE PUBLIC TO SEARCH THE RECORDS REQUIRED UNDER SUBSECTION (A)
4 OF THIS SECTION BY CANDIDATE, BALLOT ISSUE, PURCHASER, AND DATE.

5 (E) FOR PURPOSES OF THIS SECTION, A PERSON SHALL BE CONSIDERED TO
6 HAVE PURCHASED AN ONLINE POLITICAL ADVERTISEMENT IF THE PERSON HAS
7 EXECUTED A CONTRACT TO PURCHASE AN ONLINE POLITICAL ADVERTISEMENT.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June
9 1, 2018.