



ASSEMBLY MEMBER  
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AB 864: DISCLOSE Act; Clean-up



## **PURPOSE**

AB 864 has modest clarifications following the passage and enactment of the California DISCLOSE Act, AB 249 (Mullin), and the Social Media DISCLOSE Act, AB 2188 (Mullin), to make it easier to comply with disclosure requirements and the original intent. These clarifications were brought to our attention in many instances by the Fair Political Practices Commission (FPPC) following the 2018 election.

## **EXISTING LAW**

In 2017, AB 249, the California DISCLOSE Act, was signed into law. The DISCLOSE Act made strides in addressing previous lax campaign finance disclosure policy. The measure improved the clarity of the formatting of disclosures of top funders of ballot measure and independent expenditure ads on TV, radio, print, and common forms of electronic media. It also established new earmarking rules to identify original donors to committees and ballot measures.

In 2018, AB 2188, the Social Media DISCLOSE Act, was signed into law to extend AB 249 to cover ads on social media and other online platforms like Facebook, Twitter, and Google. Also in 2018, AB 2155 (Mullin) was signed into law to clarify aspects of AB 249 identified during initial implementation hearings at the FPPC and during the 2018 primary.

## **BACKGROUND & PROBLEM**

DISCLOSE Act stands for Democracy is Strengthened by Casting Light on Spending in Elections.

Campaign spending on ballot measures has reached unprecedented levels. Over \$1 billion has been spent in California on ballot measures since 2014, much on ads that try to hide the true identities of top donors to campaign ads behind misleading names or by making them difficult to read. Hundreds of millions of dollars more was spent on independent expenditures supporting or attacking candidates.

AB 249 allowed voters to much more easily see the top 3 funders of ballot measure and independent expenditure ads. E.g., ads on TV are now required to

show disclosures for 5 seconds on a solid black background on the bottom 1/3 of the screen, with each of their top 3 funders listed on separate lines.

AB 2188 extended disclosure requirements to “online platform disclosed advertisements” on online platforms like Facebook, Twitter, and Google. It required political advertisers to notify online platforms of necessary information when they place paid ads, including their disclosure name and top 3 funders (if applicable), and also required the online platforms to disclose that information on the ads.

Since AB 249's and AB 2188's passage, the FPPC and stakeholders have raised a number of small issues that need further clarification by the Legislature, including requests for greater consistency.

Also, complaints from voters about some of the disclosures in the 2018 election shows the need for additional reasonable rules to ensure that AB 249's original intent to allow voters to easily read the top 3 funders on ads is fulfilled.

## **SOLUTION**

AB 864 has a number of technical clarifications of AB 249 and AB 2188 requested by the FPPC. In addition, it has the following modest substantive changes to provide greater clarity and consistency in the laws and to better fulfill their original intent:

- Moves all disclosure requirements for robocalls and paid phonebanking calls into one section (84310) and makes the threshold for the number of calls at which disclosures are required consistent with the threshold for mass mailings and mass emailings (i.e., 200 instead of 500).
- Requires all types of committees, including candidate and political party committees, to comply with AB 249's disclosure requirements for electronic media ads. Currently all types of committees must comply with AB 2188's disclosure requirements for social media ads and with AB 249's requirement for websites. But candidate and political party committees don't

have to comply with AB 249's requirements that graphic electronic media ads that aren't on social media say "Who funded this ad?" and link to a website with the normal disclosure. This change will provide consistency and stop voters from wondering why candidate and party graphic ads have no disclosures at all.

- Addresses an abuse in which some committees made their name so long that it's impossible for voters to read the top 3 funders on TV ads in 5 seconds, by requiring that if the committee name takes 3 lines or more the disclosure shall be shown for at least 8 seconds.
- Currently, intentional formatting violations of AB 249 are subject to fines up to 3 times the cost of the ad. AB 864 requires the FPPC to create a webpage where people can report potential ad disclosure violations, and to automatically forward those complaints to accused violators by email and certified mail within 3 business days. States that if violators don't address the violation within 5 business days after receiving the certified mail the violation is eligible for fines up to 3 times the cost of the ad. I.e., if a committee is notified of a problem and they don't act, there's no need for the FPPC to prove the violation was "intentional".
- Future amendments intend to detail new disclosure requirements for mass text messages, including those sent by person-to-person text services.

## **SUPPORT**

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California Clean Money Campaign

## **STAFF CONTACT**

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