

AB 249 (Mullin, Levine), *California DISCLOSE Act*

Summary of Provisions

AB 249 (Mullin-Levine), the *California DISCLOSE Act*, will dramatically improve disclosure on both ballot measure ads and independent expenditure ads. It also includes new earmarking rules for ballot measure ads so that they must show their true funders even when they try to hide their earmarked contributions behind one or more layers of primarily formed committees with misleading names.

AB 249 is based on last year's AB 700, but with amendments, negotiated with stakeholders, to improve it and address problems revealed by analysis since final AB 700 amendments were introduced by the Senate Appropriations Committee.

Knowing the true funders of ads will prevent voters from being deceived about who is truly paying for them, help voters better evaluate the credibility and content of ads, and promote greater confidence in the electoral process.

New Earmarking Rules For Disclosure of Top Contributors So Contributors Can't Easily Hide on Ballot Measure Ads

To ensure that contributors can't intentionally hide from appearing in AB 249's ballot measure ad disclosures by transferring their money through one or more primarily formed ballot committees, AB 249 requires in 84501(c)(3) that when a primarily formed committee receives earmarked funds from another primarily formed committee for the same measure, that the original contributor be shown on the ads as a top contributor if the earmarked contribution makes them one of the top three contributors of \$50,000 or more.

84501(c)(3) further states that "if the committee receiving the earmarked contribution contributions any portion of the contribution to another committee primarily formed to support or oppose the specifically identified ballot measure or candidate, that committee shall disclose the true source of the contribution to the new committee" and that the new committee shall disclose it on its ads, or pass on the true contributors to any primarily formed committee that it gives the earmarked contribution to. That way original funders must be tracked and shown on ads if they're in the top three no matter how many layers of primarily formed committees they pass through.

84501(c)(3)(A) also defines that reasonable accounting rules be used to determine which earmarked contributors to report when more or less than the totals of all earmarked contributions are given to other committees and that that no earmarked contributors shall be disclosed more than once to avoid disclosure of particular contributors.

Creates New Earmarking Reporting Rules to Make It Easier to Trace Funders

AB 249 also expands existing "earmarking" rules in Section 85704 for contributions meant for particular candidates to also include specifically identified committees or ballot measures. They then must be fully disclosed online pursuant to the intermediary tracking rules of Section 84302, so earmarked contributions would appear be shown on committee reports no matter how many layers of committees they passed through.

Like AB 700, AB 249 covers earmarking for specific ballot measures, candidates, and committees, but does not cover earmarking for independent expenditures for or against candidates (as AB 14 would have). It does, however, still improve formatting and number of contributors IE ads must show compared to current law.

Contributions that are earmarked must be fully tracked and disclosed pursuant to existing code Section 84302.

Section 84704(b) defines a contribution as being earmarked under any of the following circumstances:

- (1) The committee or candidate receiving the contribution solicited the contribution for the purpose of making a contribution to another specifically identified committee, ballot measure, or candidate, requested the contributor to expressly consent to such use, and the contributor consents to such use.

(2) The contribution was made subject to a condition or agreement with the contributor that all or a portion of the contribution would be used to make a contribution to another specifically identified committee, ballot measure or candidate.

(3) After the contribution was made, the contributor and the committee or candidate receiving the contribution reached a subsequent agreement that all or a portion of the contribution would be used to make a contribution to another specifically identified committee, ballot measure, or candidate.

Avoiding counterproductive and burdensome earmarking of small member dues

It would be counterproductive and unnecessarily burdensome to require small member dues, fees, and assessments to be earmarked and tracked, which would mean that reports would show small individual donors rather than the actual membership organizations. Section 85704(c) therefore says that member dues, fees, assessments, and similar payments from to membership organizations in an amount less than \$500 per calendar year from a single source shall not be considered earmarked.

Requires Clear and Prominent Disclosure of Top Contributors of Political Ads

AB 249 requires that state and local ballot measure ads and independent expenditure ads about candidates to clearly and prominently list their top three contributors of \$50,000 or more (two for radio ads and robocalls). Unlike current California regulations, which don't require ads paid for by general purpose committees to list their top funders, AB 249 requires ads paid for by both general purpose and primarily formed committees to do so.

TV ads (Section 84504.1): Replaces fine print disclosures with a bold listing of the top three contributors on the bottom 1/3 of the screen on a solid black background for five seconds (ten seconds for ads longer than 30 seconds), plus the name of the committee paying.

- *Includes prescriptive requirements for disclosure layout, font size, type, background color, underlining, and capitalization to stop advertisers from taking advantage of ambiguous rules as they currently do to make disclosures hard to read.*
- *The name of each of the top three contributors must appear on a separate line in a contrasting color at exactly 4% of the height of screen.*
- *To make them easier to read, top contributors shall not appear in all capital letters (Section 84503).*
- *Same amount of time and space as current law, but infinitely more effective at showing top contributors.*

Radio ads and robocalls (Section 84504): Replaces confusing speed reader disclosure with a requirement to read a simple and clear disclosure: "Paid for by <Committee name>. Committee major funding from <Top Contributor1> and <Top Contributor2>. Ads supporting or opposing candidates that are paid for by independent expenditures must also include the standard Section 84506.5 statement that it was not authorized by a candidate or committee controlled by a candidate.

- *Disclosures must be "read in a clearly spoken manner and in a pitch and tone substantially similar to the rest of the advertisement".*
- *Disclosures will only have to name one top contributor if naming two would make the disclosures take longer than eight seconds.*
- *Usually shorter than current law disclosures (which can take 12-249 seconds) because it does not require committees' economic interests or major contributors to be read separately as part of their name. But more effective because contributors are not obscured by speed-reading gobbledygook.*

Print Ads and Mass Mailings (Section 84504.2): Must clearly list their top three contributors and the name of the committee paying for the ad in a white box with black print. If the committee spends more than \$1 million, then it must also provide a link to the page on the FPPC website listing its top 10 contributors that is required by 20249's SB 27. Ads supporting or opposing candidates that are paid for by independent expenditures must also include the standard Section 84506.5 statement that it was not authorized by a candidate or committee controlled by a candidate.

- *The name of each of the top three contributors must appear on a separate line in black Arial type in at least 10 point for printed advertisements designed to be individually distributed, including but not limited to mailers, flyers and door hangers.*
- *Type on printed advertisement that is larger than those designed to be individually distributed, including but not limited to yard signs or billboards, shall be in Arial type at least 5% of the height of the ad, and printed on a solid background with sufficient contrast that is easily readable by the average person.*
- *To make them easier to read, disclosures shall not appear in all capital letters (Section 84503)*
- *Disclosures that are 20 square inches or less are allowed to list only one top contributor.*

Electronic Media Advertisements (Section 84504.3): Unless impracticable, online ads and other similar electronic media communications must include the text "Who funded this ad?" in a contrasting color and a font size that is easily readable by the average viewer, which must hyperlink to an Internet Web site containing disclosures of the top three contributors.

- *Electronic media ads must hyperlink to a website that includes the disclosure text regardless of whether it is practical to put the written disclosure on the ad.*
- *Social media posts are not required to include the top 3 disclosures on their posts themselves, but are required to include them on the committee's profile, landing page, or similar location.*
- *Audio-only electronic media ads must comply with the same disclosure rules as radio ads.*

Ads Paid for by Political Parties or by Candidate Committees Established for an Elective Office of the Controlling Candidate (Section 84504.4 & 84504.5): Current California law does not explicitly require political party or candidate TV or radio ads to even say who paid for them, instead relying on FCC regulations to do so. AB 249's Section 84504.4 codifies in California law that they must do so using the same formatting and time requirements as current FCC regulations.

Current FPPC regulations do not require independent expenditures by political parties in support or opposition to ballot measures or candidates to list their top contributors, only that they list their name. AB 249's Section 84504.5 codifies California's status quo for disclosures on their ads, because voters know who the parties are.