

# **AB 249 (Gomez, Levine), California DISCLOSE Act**

## **Summary of Provisions**

AB 249 (Gomez-Levine), replacing AB 14, is the new version of *California DISCLOSE Act*, which will dramatically improve disclosure on ballot measure ads about who has paid for the ads. Knowing the true source of funds for 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.

**AB 249 starts from AB 700 language as stakeholders asked, but with 3 amendments addressing problems** revealed by analysis since final AB 700 amendments were introduced by the Senate Appropriations Committee. See “*AB 249 vs AB 14 and AB 700*” for more details on how AB 249 differs from them.

### **Creates New Earmarking Rules So Earmarked Contributors Can't Hide on Ads**

To ensure that contributors can't intentionally hide from appearing in AB 249's ballot measure ad disclosures, it 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 pursuant to the intermediary tracking rules of Section 84302, so earmarked contributions would appear on ads if they're in the top 3 contributors 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.

### **Relief for all committees from unnecessary earmarking tracking of small donors**

There is no reason for AB 249 to require member organizations to consider small member dues as earmarked under its new rules because they won't be displayed as the top three contributors of \$50,000 or more on ads. Section 85704(c) therefore says that contributions in an amount less than \$500 per calendar year from a single source for the purpose of making contributions or expenditures for a specifically identified ballot measures shall not be considered earmarked by the new rules.

This significantly narrows AB 700's exemption of contributions up to \$7,300 a year even for contributions to candidates, which the FPPC said would “increase money laundering”, while still providing reasonable protection against unnecessary new ballot measure earmarking tracking for potentially thousands of small member dues.

## 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). Ballot measure ads use new earmarking rules to ensure that contributions are meant for specific ballot measures or committees must be disclosed if they're among the top 3 even if the contributions were passed through multiple layers of committees.

**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 ds 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.*