

SENATE THIRD READING  
SB 746 (Skinner)  
As Amended May 10, 2022  
2/3 vote

## SUMMARY

Requires a business entity to disclose any campaign contributions or expenditures that result when the entity intentionally utilizes its products or services to disseminate communications made for political purposes, as specified. Partially overrides a regulation that allows employees to spend a small portion of their compensated time on political activities without triggering campaign disclosure reporting for the employer.

### Major Provisions

- 1) Provides that a business entity that intentionally utilizes its products or services to disseminate communications made for political purposes, and that takes that action at the direction of one or more of the officers of the business entity, is subject to the limits, prohibitions, and reporting requirements set forth in the Political Reform Act (PRA) for any resulting contribution or expenditure, as specified. Defines "political purposes," for the purpose of this provision, as influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure.
- 2) Specifies that if the product or service used by a business entity to disseminate a political communication, as described above, is an online service operated by the business entity, any payment of salary, reimbursement for personal expenses, or other compensation paid or incurred by the business entity for the specific purpose of disseminating the communication is a contribution or expenditure for purposes of the PRA, notwithstanding an existing regulation that specifies that the payment of salary or other compensation by an employer to an employee is a contribution or expenditure under the PRA if the employee spends more than 10% of compensated time in any month rendering services for political purposes.
- 3) Provides that the provisions of this bill do not apply to either of the following:
  - a) A business entity's use of its products or services exclusively to carry out its commercial activities, including, but not limited to, delivering user-generated content or an advertisement on behalf of another person.
  - b) Communications that are internal to a business entity or entities.

## COMMENTS

In describing the primary problem that this bill seeks to address, the author contends that existing law would allow a large online platform to manipulate the algorithm that determines the content that its users see in a manner that is designed to influence the outcome of an election, and that the company would not be required to disclose those activities under existing law. The author provided two examples where actions taken by large technology companies had the potential to influence elections without regulatory oversight or public disclosure.

First, the author points to reports that Google was providing skewed search results in connection with a proposition that it did not support. As *Politico* reported in October 2020:

Google searches for seven of the state's 12 ballot proposals have surfaced campaign arguments from the state voter guide instead of neutral "snippets," said former cybersecurity executive Tom Kemp. He said those search results could sway voters who rely on those first impressions to understand what the measures do, on subjects ranging from stem cell research to commercial property taxes.

His findings about Google – a de-facto roadmap for voters making their way through lengthy ballots – suggest that algorithms can turn even neutral sources into biased ones, a problem that could extend well beyond the nation's tech capital...

In one California example, a Google search of "Prop 24" on Thursday turned up this description of a November data privacy initiative from the state's voter guide: "CON Proposition 24 reduces your privacy rights in California. Proposition 24 allows 'pay for privacy' schemes, makes workers wait years to learn what confidential ..."

In addition, the author points to a 2014 report by *Mother Jones* magazine that Facebook was "quietly conducting experiments on how the company's actions can affect the voting behavior of its users." *Mother Jones* further reported that "the process by which Facebook has developed this tool—what the firm calls the 'voter megaphone'—has not been very transparent, raising questions about its use and Facebook's ability to influence elections." The tool described in the article is one that Facebook says is designed to encourage its users to vote. In response to questions from the *Mother Jones* reporter, Facebook claimed that the distribution of the tool was random (that is, Facebook did not push the tool to certain types of users).

Notwithstanding the author's concern about the power that large online services may have to influence voter behavior by affecting the information that their users see, it is not clear that this bill would provide any additional meaningful disclosure about whether and how online services seek to influence, for political purposes, the information that its users see.

The two examples discussed above may demonstrate that large online platforms have the potential to exert considerable influence over the voting behavior of their users with little or no public disclosure. It is not clear, however, that this bill would have required disclosure in either of those cases. The same former cybersecurity executive who called attention to Google's search results (Tom Kemp) was quoted in the *Politico* article as saying that he believes the bias in Google's search results was inadvertent. In the case of Facebook's voter megaphone, nothing in the article indicates that Facebook's activities were for "political purposes" as that term is defined in this bill.

Additionally, Assembly Elections Committee staff is unaware of any evidence of an online platform intentionally modifying the algorithm that determines the content that its users see in an effort to support or oppose specific candidates or ballot measures. If an online platform *did* intentionally modify its algorithm in such a manner, those actions may or may not already be subject to reporting under the PRA under existing law, depending on the exact nature of the platform's actions.

One provision of this bill seeks to override an existing Fair Political Practices Commission (FPPC) regulation as it relates to an employer's payment of an employee's salary or other

compensation, and where a portion of that employee's compensated time is spent rendering services for political purposes. Specifically, as a general rule, when an employer pays a salary or other compensation to its employees who are engaged in rendering services for political purposes, that payment normally is considered a campaign contribution or expenditure. However, 2 California Code of Regulations Section 18423 provides a limited exception to this general rule, allowing payment of salary or other compensation by an employer to an employee to go unreported as a contribution or expenditure if 10% or less of the employee's compensated time in a month is spent rendering services for political purposes. This limited exception (hereinafter referred to as the "10% exception") applies to all employers; it is not something that is unique to for-profit businesses or to large online services.

This bill seeks to eliminate the 10% exception as it relates to a business entity if the salary or other compensation paid by the business entity to its employees is for services related to the specific purpose of disseminating a political communication through an online service operated by the business entity. For example, if 5% of an employee's compensated time is spent rendering services for the specific purpose of disseminating a political communication through the employer's online service, the value of that 5% of the employee's compensated time would be considered a contribution or expenditure by the employer. Eliminating the 10% exception in these circumstances would require some business entities that operate online services to report a larger number of payments as contributions or expenditures. For example, an online service provider might be required to report that \$1,000 worth of one of its employee's compensated time was spent rendering services that supported or opposed a specified candidate or ballot measure.

Eliminating the 10% exception would not, however, require the provider to publicly disclose that it made changes to how information was provided to its users in an effort to influence elections, nor would it require any disclosure about more subtle ways that a service may seek to influence the political decisions of its users (for instance, by targeting its users with politically-charged content that does not expressly advocate for or against a candidate or ballot measure).

Although the author has described the 10% exception as it relates to online services as a "loophole," Assembly Elections Committee staff is not aware of any evidence that the existing 10% exception is being abused. On the other hand, eliminating the exception, even if only for certain political communications that are disseminated using online services, could have unintended consequences and add considerable complexity for campaign reporting.

Please see the policy committee analysis for a full discussion of this bill.

#### **According to the Author**

"Under current law, the only way a business can legally influence an election is by making a cash or in-kind campaign contribution to a candidate or political committee, or by making independent expenditures, and both actions must be disclosed to the public. Although the Constitution guarantees a business the right to influence an election, the Supreme Court has also held that there is ample reason to require public disclosure of such influence. Accordingly, California has extensive reporting requirements for both monetary and nonmonetary contributions to political campaigns. However, recent technological advancements have made it possible for digital companies to individually influence voter behavior in ways that do not have to be publicly disclosed.

"Just like with other types of media, voters should have the right to know if they're being purposely presented with information designed to influence how they vote. SB 746 addresses this gap in political reporting requirements and restores public trust in online content by allowing voters to know if they are being manipulated in partisan ways. Specifically, SB 746 promotes Internet transparency by requiring online platforms that use personal information to directly target voters on behalf of a candidate or ballot measure to disclose that activity to the Fair Political Practices Commission. Users can then see from this annual, public report which online businesses have politically targeted consumers – potentially influencing the way consumers have voted. Taking this step is critical to ensuring that evolving technological capabilities do not interfere with our Constitutional right to free and fair elections."

**Arguments in Support**

None received.

**Arguments in Opposition**

None received.

**FISCAL COMMENTS**

According to the Assembly Appropriations Committee, FPPC reports costs are minor and absorbable.

**VOTES****SENATE FLOOR: 29-6-5**

**YES:** Allen, Archuleta, Atkins, Becker, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hertzberg, Hueso, Hurtado, Kamlager, Laird, Leyva, Limón, McGuire, Newman, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener

**NO:** Grove, Jones, Melendez, Nielsen, Ochoa Bogh, Wilk

**ABS, ABST OR NV:** Bates, Borgeas, Bradford, Dahle, Min

**ASM ELECTIONS: 7-0-0**

**YES:** Bryan, Seyarto, Bennett, Low, Mayes, Mullin, Blanca Rubio

**ASM APPROPRIATIONS: 15-0-1**

**YES:** Holden, Bigelow, Bryan, Calderon, Carrillo, Megan Dahle, Davies, Mike Fong, Fong, Gabriel, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson

**ABS, ABST OR NV:** Eduardo Garcia

**UPDATED**

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