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UNFINISHED BUSINESS

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Bill No: SB 746  
Author: Skinner (D)  
Amended: 8/18/22  
Vote: 27

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PRIOR SENATE VOTES NOT RELEVANT

ASSEMBLY FLOOR: Not available

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**SUBJECT:** Political Reform Act of 1974: business entities: online advocacy and advertisements

**SOURCE:** Author

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**DIGEST:** This bill requires a business entity that uses its online products or services to target information to its users, for political purposes, to disclose that targeting on a public report that is filed with the Secretary of State (SOS) beginning on January 1, 2024, as specified.

*Assembly Amendments* replace the contents of the bill with the language requiring reporting on targeting information for political purposes.

**ANALYSIS:**

Existing state law:

- 1) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act of 1974 (PRA).
- 2) Provides for the comprehensive regulation of campaign financing and related matters, including by prohibiting, limiting, or requiring disclosure of certain political activities and by regulating certain political advertisements.

- 3) Defines “contribution,” for the purpose of the PRA, as a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, except to the extent that full and adequate consideration is received or if it is clear from the surrounding circumstances that the payment is not made for political purposes.
- 4) Defines “expenditure,” for the purpose of the PRA, as a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes.
- 5) Requires political committees to file periodic campaign reports that disclose campaign contributions and expenditures, as specified.

This bill:

- 1) Requires a business entity to submit a report to the SOS following any calendar year in which the business entity does either of the following:
  - a) Uses its products or services to alter the online search results its products or services generate in order to emphasize or deemphasize materials containing express advocacy, as specified. Provides, for these purposes, that a communication contains express advocacy if it contains express words of advocacy such as “vote for,” “elect,” “support,” “cast your ballot,” “vote against,” “defeat,” “reject,” “sign petitions for,” or, within 60 days before an election in which a candidate or measure appears on the ballot, the communication otherwise refers to the clearly identified candidate or measure so that the communication, taken as a whole, unambiguously urges a particular result in an election.
  - b) Uses its products or services to target online advertisements to individuals or groups, or generally to users or members of the public, without full and adequate consideration and for political purposes, as specified. Provides that a use is for political purposes if it is for 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) Requires the report to contain all of the following information:

- a) The name of each candidate or measure with regard to which search results were altered, as described above in 1) a), or that were the subject of an advertisement targeted as described above in 1) b).
  - b) For each candidate or measure, whether the search results or advertisements were to support or oppose the nomination or election of the candidate or the qualification or passage of the measure.
  - c) The full name, title, and business street address and telephone number of each person with final decision making authority as to which candidates or measures will be supported or opposed by the business entity's search results or advertisements.
  - d) The date or range of dates in which the search results were altered or the advertisements were targeted.
- 3) Requires a report to be filed by January 31 for activity occurring during the previous calendar year.
  - 4) Requires the report to be filed on paper or by email with the SOS and requires the SOS to make each report publicly available in a conspicuous location on the SOS's website. Permits the report to be included in an online filing and disclosure system if the SOS certifies that the system is able to incorporate that report, as specified.
  - 5) Requires a business entity that is subject to this bill to maintain detailed accounts and records necessary to prepare the report required by this bill and to retain those accounts and records for four years following the date the report is filed.
  - 6) Provides that this bill does not apply to either of the following activities:
    - 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 a paid advertisement on behalf of another person.
    - b) Communications that are internal to a business entity or entities.
  - 7) Specifies that this bill is not intended to expand or limit the definition of contribution or expenditure under the PRA.

- 8) Provides that the provisions of this bill will become operative on January 1, 2024.

## **Background**

*What is the Problem?* In describing the primary problem that this bill seeks to address, the author provided in part the following information:

If a large social media company were to want a tech-friendly candidate to win an election, it has the ability to manipulate its algorithm to target specific voters with news reports and other types of information that favor the company's preferred candidate — or portray the opposing candidate in a negative light. Under current California law, such an action by a social media company would not have to be disclosed to the public, even though the action is designed to influence the outcome of the election. Although there is no concrete evidence that tech companies are influencing elections in this way, they now have the ability to do so without detection.

*Prior Versions of this Bill.* As heard last year, this bill would have required businesses to disclose whether they use the personal information of consumers for political purposes, as defined, to consumers, upon request, and annually to the Attorney General or the California Privacy Protection Agency. Specifically, the previous bill would give an individual consumer the right or ability to determine how a business used that consumer's personal information for a political purpose and whether the business targeted that individual with political communications or, if the individual was targeted, what those communications were and which candidate or ballot measure they were intended to support or oppose.

*Will This Bill Achieve Effective Disclosure of Efforts by Online Platforms to Influence Elections?* If an online platform did intentionally modify its algorithm in such a manner, this bill may require the platform to file a public report that discloses those activities. As a result, if online platforms are intentionally modifying their search results with the intent of supporting or opposing candidates and ballot measures, this bill could require additional disclosure of those activities in certain circumstances. In some circumstances, however, such actions would already be subject to reporting under the PRA pursuant to existing law, depending on the exact nature of the platform's actions.

Specifically, if a business entity uses its products or services to alter search results or to target online advertisements in a manner that is designed to influence voters to support or oppose candidates or ballot measures, the actions of business entity in

making those changes to its products or services could be considered an in-kind contribution or an independent expenditure under the PRA that must be reported. In such a situation, state law may require public disclosure of the entity that made that contribution or expenditure, the value of the business entity's actions, and an identification of the candidate or measure that the entity's actions supported or opposed.

## **Comments**

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.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

Unknown with recent amendments.

**SUPPORT:** (Verified 8/31/22)

Fair Political Practices Commission

**OPPOSITION:** (Verified 8/31/22)

None received

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8/31/22 15:33:44

**\*\*\*\* END \*\*\*\***