SPONSOR: Rep. K. Williams & Sen. Walsh
Reps. Bolden, K. Johnson, Michael Smith, Snyder-Hall, Wilson-Anton; Sens. Hansen, Hoffner, Sokola

HOUSE OF REPRESENTATIVES
153rd GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 216

AN ACT TO AMEND TITLE 15 OF THE DELAWARE CODE RELATING TO ELECTION CAMPAIGNS AND PUBLIC DISCLOSURES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 8002, Title 15 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 8002. Definitions.

As used in this chapter:

(1) "Affiliated controlling entity" means a person or entity that has the power to direct the decision and operations of another entity through any of the following means:

a. The governing instrument of the entity requires it to be bound by decisions of the affiliated controlling entity.

b. The governing board of the entity includes persons who are specifically designated representatives of the affiliated controlling entity or who are members of the governing board, officers, or paid executive staff members of the affiliated controlling entity, or whose service on the governing board is contingent upon the approval of the affiliated controlling entity.

c. The entity is created or sponsored by the affiliated controlling entity.

~~(5)~~ (6) "Clearly identified candidate" means that the name, ~~a photograph~~ photograph, image, or a drawing of the candidate appears or the identity of the candidate is otherwise ~~apparent by unambiguous reference.~~ clear and obvious.

~~(7)~~ (8) "Communications media" means television, radio, ~~newspaper or other~~ newspaper, social media, text message, email, periodical, sign, Internet, ~~mail~~ mail, or telephone.

(9) "Conduit" means an entity whose primary purpose is to act as an intermediary or pass-through for the transfer of funds between a donor and a third-party advertisement or political committee.

~~(8)~~ (10) "Contribution" means any advance, deposit, gift, expenditure or transfer, of money or any other thing of value, to or for the benefit of any candidate or political committee involved in an election, including without limitation ~~any:~~ any of the following:

a. Gift, subscription, advance, deposit, expenditure or transfer of any thing of ~~value;~~ value.

b. Discount or rebate not available to the general public (except a party's abatement or refund of a filing fee otherwise required under § 3103 of this ~~title);~~ title).

c. Loan (except a loan of money by a national or state bank, building and loan ~~association~~ association, or licensed lender made in the ordinary course of ~~business);~~ business).

d. Purchase of tickets, ~~goods~~ goods, or services sold to raise funds for a campaign, whether or not the tickets, ~~goods~~ goods, or services are used by the ~~buyer;~~ buyer.

e. Forgiveness of indebtedness or payment of indebtedness by another ~~person;~~ person.

f. Service or use of property without full payment therefor (except the contribution of services by an individual, the use of an individual's residence, the contribution of such items as invitations, ~~food~~ food, and beverages by an individual volunteering personal services or the individual's residence, or the use of the ~~telephone equipment~~ household facilities of any ~~person); or~~ person).

g. Any other thing of value (except an independent expenditure).

(11) "Donor" means a person who voluntarily contributes funds to a business entity, nonprofit organization, political committee, or other organization that directly or indirectly, through a conduit or otherwise, contributes to a political committee or third-party advertisement.

(16) "Foreign national" means any of the following:

a. A government of a foreign country.

b. A foreign political party.

c. A person who is not a citizen or lawful permanent resident of the United States.

d. An entity organized under the laws of or having its principal place of business in a foreign country.

(17) "Foreign-controlled entity" means any of the following:

a. An entity in which a foreign national owns or controls 20% or more of the equity or voting interests.

b. An entity in which a foreign national directs, dictates, or participates materially in decision-making regarding political contributions or expenditures.

~~(15)~~ (20) "Membership communication" means ~~a newsletter or periodical, telephone call, or any other~~ any communication distributed solely to the members, shareholders, or employees of an organization or institution.

(22) "Out-of-state political action committee" means an organization or association organized under laws outside of the State, which accepts contributions from or makes expenditures to an election within the State, and is any of the following:

a. An entity registered with the Federal Elections Commission.

b. An entity registered with an out-of-state agency that requires the organization to report campaign finance expenditures and contributions to the out-of-state agency.

~~(19)~~ (25) "Political committee" means:

a. Any organization or association, whether permanent or created for the purposes of a specific political campaign, which accepts contributions from or makes expenditures to any candidate, candidate ~~committee~~ committee, or political party in an aggregate amount in excess of $500 during an election period, not including independent ~~expenditures; and~~ expenditures and is not an out-of-state political committee.

b. All political parties and candidate committees.

c. An out-of-state political committee that contributes more than $2,000 to a Delaware election, exempting contributions made to candidate committees and political parties.

~~(28)~~ (34) "Treasurer" means the individual appointed by a candidate or political committee to assist the candidate or political committee with the duties imposed by this chapter.

(35) "Underlying funding source" means the following must be disclosed:

a. For an entity that is not a political action committee or a nonprofit:

1. The name and address of the individual responsible for making and disclosing the entity's contribution.

2. The name and address of all persons who, directly or otherwise, own a legal or equitable interest of 50% or greater (whether in the form of stock ownership, percentage of partnership interest, liability for the debts of the entity, entitlement to the profits from the other entity or other indicia of interest) in the corporation, partnership, or other entity, or a statement that no such persons exist.

3. The 5 persons who made the 5 largest aggregate transfers to the entity in the last 12 months, if applicable.

4. If the entity is a conduit, then the underlying source of funds of the person who contributed the funds to the conduit.

b. For a political action committee:

1. The name of any affiliated controlling entity.

2. Unless paragraph (35)b.3. of this section applies, the name of the 5 persons who made the 5 largest aggregate transfers to the political action committee in the past 12 months. If any of the persons listed under this paragraph are not individuals, then the underlying funding source of those persons.

3. If the political action committee is acting as a conduit for earmarked funds that originate from a single donor, then the underlying source of funding of the original donor of those funds.

c. For a nonprofit organization, such as a tax-exempt entity under Section 501(c)(4) of the Internal Revenue Code:

1. Unless paragraph (35)c.2. of this section applies, the name of the top 5 persons who made the 5 largest aggregate transfers to the nonprofit in the past 12 months. If any of the persons listed under this paragraph are not individuals, then the underlying funding source of those persons.

2. If the nonprofit organization is acting as a conduit for earmarked funds that originate from a single donor, then the underlying source of funding of the original donor of those funds.

Section 2. Amend § 8005, Title 15 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8005. Duties of a political committee.

(a) (1) A political committee ~~shall:~~ that is not an out-of-state political committee must file

~~(1) File~~ a statement of organization with the Commissioner no later than 24 hours after it receives any contribution or makes any expenditure that causes the aggregate amount of contributions by or expenditures to such committee to exceed $500 during an election period.

(2) An out-of-state political committee must file a statement of organization with the Commissioner no later than 24 hours after it receives any contribution for or makes an expenditure to an election in Delaware that causes the aggregate amount of contributions by or expenditures to an election in Delaware to exceed $2,000 during an election period, exempting contributions to candidate committees and political parties.

(b) The statement of organization required by subsection (a) of this section shall be filed under penalty of perjury, and shall include the following information:

~~a.~~ (1) The full name and mailing address of the ~~committee;~~ committee.

~~b.~~ (2) The full name and mailing address of each of the officers of the committee, 1 of whom shall be an individual named as its ~~treasurer;~~ treasurer.

~~c.~~ (3) A concise statement of the committee's purposes or ~~goals;~~ goals.

~~d.~~ (4) The name, office sought, and party affiliation of any candidate whom the committee is supporting or opposing, to the extent such information is known as of the date of filing; and, if the committee is supporting the entire ticket of any party, the name of the ~~party; and~~ party.

~~e.~~ (5) If the committee files reports with the Federal Elections Commission or any out-of-state agency, a statement to that effect including the name of the agency.

(6) The name of all affiliated controlling entities of the political committee.

(c) A political committee that files a statement of organization under this section must do the following:

~~(2)~~ (1) Report any change in its officers within 7 days after such change becomes effective.

~~(3)~~ (2) Keep complete records of all contributions received and all expenditures made by or on behalf of the political committee, and shall retain such records for 3 full years following the election in connection with which the contributions and expenditures were made.

~~(4)~~ (3) File with the Commissioner the reports required under this chapter.

(d) For purposes of determining the $2,000 threshold under paragraph (a)(2) of this section, the following applies:

(1) Contributions for and expenditures to an election in Delaware include the following:

a. Contributions for or expenditures to an in-state political action committee.

b. Contributions for or expenditures to an out-of-state political action committee earmarked to be used in a Delaware election.

c. A third-party advertisement or independent expenditure.

(2) Contributions for an election in Delaware does not include contributions to candidate committees or political parties.

Section 3. Amend § 8013, Title 15 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8013. ~~Short title~~ Foreign contributions prohibited.

(a) No foreign national or foreign-controlled entity may, directly or indirectly, make a contribution, expenditure, independent expenditure, or electioneering communication in connection with any state or local election in this State.

(b) No candidate, candidate committee, political committee, or other person may knowingly solicit, accept, direct, receive, or expend a contribution or other thing of value from a foreign national or foreign controlled entity.

(c) A contribution or expenditure shall be considered indirect if made through a conduit, intermediary, affiliate, or any other person or entity acting on behalf of or at the direction of a foreign national or foreign-controlled entity.

(d) Each political committee and candidate committee must certify, in each report required under this chapter, that it has not knowingly received or expended funds prohibited by this section.

Section 4. Amend § 8021, Title 15 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8021. Identification of purchaser.

(a) All campaign advertisements having a fair market value of $500 or more, except printed items with a surface of less than 9 square inches, shall include prominently the statement:

"Paid for by [name of political committee or other person paying for such advertisement]."

For purposes of this section, "campaign advertisements" shall include any communication by a candidate committee or political party that would otherwise qualify as an independent expenditure or an electioneering communication but for the fact it was made by a candidate committee or political party.

(b) All third-party advertisements having a fair market value of $500 or more, except printed items with a surface of less than 9 square inches, shall include prominently the statement:

"Paid for by [name of political committee or other person paying for such third-party ~~advertisement.~~ advertisement], [state of residence, incorporation, or registration]. Learn more about [name of person] at ~~[Commissioner of Elections' web address].~~" [website to be determined by the Commissioner of Elections]."

(c) If the person paying for a third-party advertisement under subsection (b) of this section is not an individual, the advertisement must also disclose the following:

(1) The name of the entity's responsible party.

(2) The name of any controlling affiliated entities.

(3) All persons who, directly or otherwise, own a legal or equitable interest of 50% or greater (whether in the form of stock ownership, percentage of partnership interest, liability for the debts of the entity, entitlement to the profits from the other entity or other indicia of interest) in the corporation, partnership or other entity, if such persons exist.

(4) The 5 persons who made the 5 largest aggregate transfers to the entity in the last 12 months, if applicable.

(5) A link to a website maintained by the entity that lists all contributions to the third-party advertiser in the last 12 months that are greater than $100 and the underlying funding source of all contributions that are greater than $100 and not from an individual, if applicable. The website shall contain a white background with black 12-point font. It must state at the top of the website the following statement:

"Below is a list of all contributions greater than $100 to [the entity] as required by Title 15 of the Delaware Code."

(6) Next to the name of each person disclosed under this subsection, the third-party advertisement and linked website must also disclose the person's state of residence, incorporation, or registration.

~~(c)~~ (d) The Commissioner may adopt regulations regarding the size, ~~placement~~ placement, and duration of the foregoing statements as the same shall apply to specific forms of campaign advertisements. In connection therewith, the Commissioner may modify or amend the foregoing statements to conform to the requirements of a particular medium (i.e., television, radio, print, Internet), and may by regulation create exemptions from the requirements hereunder where compliance is not reasonably practicable due to the small size or short duration of such advertisements. In all events, however, campaign advertisements having the same medium and duration (for example, 15-second radio advertisements or Internet advertisements having less than 200 characters) ~~shall~~ must be subject to the same requirements. The Commissioner must identify, and update as necessary, a web address to be used by all third-party advertisements under subsection (b) of this section.

Section 5. Amend § 8030, Title 15 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8030. Reports of political committees.

(a) Each candidate (except a candidate who is excused from filing a report under § 8004 of this title) and every treasurer of a political committee that must file a statement of organization with the Commissioner (except of a candidate excused from filing a report under § 8004 of this title) shall be responsible for filing with the Commissioner reports of contributions and expenditures on forms prescribed by the Commissioner for every reporting period during which a political committee is in existence. A candidate shall be jointly responsible with the treasurer for the filing of the report of a candidate committee.

(h) For each expenditure for campaign advertising reported under this section, a candidate committee or political party must disclose:

(1) The name of each vendor or platform that produced, distributed, or disseminated the advertisement.

(2) The medium used to distribute the advertisement.

(3) A brief description of the advertisement.

(4) The target audience, stated as any of the following:

a. The geographic area targeted.

b. For digital or electronic advertisements, a general description of any demographic, interest-based, or audience-selection criteria used.

(i) Each report filed under this section must include a certification that the reporting entity has not knowingly received contributions or made expenditures prohibited under section § 8013 of this title.

Section 6. Amend § 8031, Title 15 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8031. Special reports — Third-party advertisements.

(a) Any person other than a candidate committee or political party who makes an expenditure for any third-party advertisement that causes the aggregate amount of expenditures for third-party advertisements made by such person to exceed $500 during an election period shall file a third-party advertisement report with the Commissioner. The report shall be filed under penalty of perjury and shall include all of the following:

(1) The information required under ~~§ 8005(1)~~ § 8005(b) of this title with respect to the person making ~~such expenditure;~~ the expenditure.

(2) The full name and mailing address of each person to whom any expenditure has been made by such person during the reporting period in an aggregate amount in excess of $100; the amount, date and purpose of each such expenditure; and the name of, and office sought by, each candidate on whose behalf such expenditure was ~~made;~~ made.

(3) The full name and mailing address of each person who has made contributions to such person during the election period in an aggregate amount or value in excess of $100; the total of all contributions from such person during the election period, and the amount and date of all contributions from such person during the reporting ~~period;~~ period.

(4) If a person who made a contribution under paragraph (a)(3) of this section is not an individual, the full name and mailing address ~~of:~~ of the underlying funding source for that person.

~~a. Any person who, directly or otherwise, owns a legal or equitable interest of 50 percent or greater in such entity; and~~

~~b. One responsible party, if the aggregate amount of contributions made by such entity during the election period exceeds $1,200; and~~

(5) The aggregate amount of all contributions made to the person who made the expenditure.

(b) For purposes of this section, a reporting period shall begin on the day after the previous reporting period under § 8030 of this title or this section, whichever is later. However, if the person making the expenditure hereunder was not previously required to file any reports during the election period under § 8030 of this title or this section, then the reporting period ~~shall begin~~ begins on the date the first contribution is received or expenditure made by or on behalf of such person in

the current election period. A reporting period shall end on the date of the expenditure set forth in subsection (a) of this section.

(c) Any person other than an individual that makes a contribution for which disclosure is required under paragraph (a)(3) of this section shall provide written notification in accordance with § 8012(e) of this title to the person filing the report hereunder. The person filing the report may rely on such notification, and should the notification provided by the representative of the entity be inaccurate or misleading, the person or persons responsible for the notification, and not the person filing the report, shall be liable therefor.

(d) If the expenditure is made more than 30 days before a primary or special election or 60 days before a general election, the report required under this section shall be filed within 48 hours after such expenditure is made. If the expenditure is made 30 days or less before a primary or special election or 60 days or less before an election, such report shall be filed with the Commissioner within 24 hours after such expenditure is made. For purposes of this section, an expenditure shall be deemed to be made on the date it is paid or obligated, whichever is earlier.

(e) The Commissioner ~~shall adopt regulations exempting, to the extent possible, persons from reporting duplicative information under this chapter.~~ must adopt regulations relating to the reporting of third-party advertisements under this section, with illustrative examples of how the law applies in specific cases. The regulations must include examples of how to determine the underlying funding source if the source of funds for the third-party advertisement is not from an individual. A summary of the regulations, with illustrative examples must be posted on the Election Commissioner's website.

(f) Persons required to file reports under this section shall retain complete records of all expenditures made and contributions received in connection herewith for 3 years following the election for which such report was filed.

(g) For each third-party advertisement reported under this section, the report must include all of the following:

(1) The name of each vendor or platform that produced, distributed, or disseminated the advertisement.

(2) The medium used to distribute the advertisement, including television, radio, print, mail, digital, or other electronic communication.

(3) A brief description of the advertisement, sufficient to identify its subject matter.

(4) The target audience, stated as any of the following:

a. The geographic area targeted.

b. For digital or electronic advertisements, a general description of any demographic, interest-based, or audience-selection criteria used.

Section 7. Amend Subchapter IV, Chapter 80, Title 15 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8031A. Negative balance prohibited.

No report submitted under § 8030 or §8031 of this title may contain a negative ending balance. "Ending balance" means the ending balance from the last reporting period and total receipts from the current reporting period minus total expenditures from the current reporting period. A report containing a negative balance is incomplete and may be considered tardy under § 8044 of this title.

Section 8. Amend § 8043, Title 15 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8043. Violations; penalties; jurisdiction in Superior Court.

(a) Except as set forth in § 8044 of this title, any person who knowingly violates any provision of § 8003, ~~§ 8004 or § 8005~~ § 8004, § 8005, or § 8031A of this title ~~shall be~~ is guilty of a class B misdemeanor.

Section 9. This Act is effective immediately and is to be implemented on July 1, 2028.

Ssynopsis

This Act expands Delaware's campaign finance disclosure requirements to provide more transparency regarding the source of funding for contributions to and expenditures made from political committees in the State. To that end this Act does the following:

1. Requires out-of-state committees that contribute more than $2,000 to a Delaware election (exempting contributions to candidates and political parties) to register with the State Election Commissioner (Commissioner).
2. Requires political committees to list any affiliated controlling entities on its statement of registration.
3. Increases the disclosure requirements to be placed on third-party advertisements by requiring the advertisement to display, if applicable, the name of a majority owner of the third-party advertiser, the responsible party, affiliated controlling entities, and the 5 persons who made the 5 largest aggregate transfers to the entity in the last 12 months.
4. Requires third-party advertisers to display a link to a website that lists all contributions to the third-party advertisement in excess of $100. Any contribution that is greater than $100 that is not from an individual must also include information on the contribution's underlying funding source.
4. Prohibits all reports filed with the Commissioner from containing a negative balance so that the source of all funds are disclosed, including any loans.

Substitute 1 to HB 216 makes the following changes:

1. Prohibits a foreign national or foreign-controlled entity from making a contribution, expenditure, independent expenditure, or electioneering communication in connection with any state or local election in the State.
2. Requires that all campaign finance reports disclose specific information about advertisements, including the name of the vendor or platform used, the medium used, a description of the advertisement, and the target audience.
3. Replaces the current link to the Election Commissioner's website on third-party advertisements with a website to be "determined" by the Election Commissioner.
4. Requires that third-party party advertisements display the state of residence, incorporation, or registration of all persons disclosed on the advertisement itself and on the linked website containing additional disclosures.
5. Updates definitions to include modern modes of communication.
6. Changes the implementation date to July 1, 2028.
7. Makes technical changes to conform existing law to the standards of the Delaware Legislative Drafting Manual.