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HOUSE OF REPRESENTATIVES

146th GENERAL ASSEMBLY

HOUSE BILL NO. 300
AS AMENDED BY
HOUSE AMENDMENT NO. 2 AS AMENDED
BY HOUSE AMENDMENT NO. 1 TO HOUSE
AMENDMENT NO. 2
AND
HOUSE AMENDMENT NO. 3

AN ACT TO AMEND TITLE 15 OF THE DELAWARE CODE RELATING TO ENHANCED DISCLOSURE, REPORTING AND DISCLAIMER REQUIREMENTS IN DELAWARE'S CAMPAIGN FINANCE LAWS.

WHEREAS, the State of Delaware has a compelling interest in (1) providing voters with relevant information about where political campaign money comes from and how it is spent, so that voters can make informed choices in elections; (2) reducing the risk or appearance of undue influence by ensuring political spending is comprehensively disclosed; and (3) promoting compliance by candidates and political groups with campaign finance laws; and

WHEREAS, under existing law, persons who purchase political advertisements that expressly advocate for the election or defeat of a candidate are subject to disclosure requirements, but persons who purchase advertisements to influence elections without expressly advocating for a candidate are not; and

WHEREAS, as a result, Delaware has seen a proliferation of advertisements featuring candidates that are distributed during the campaign season and are intended to influence elections, but are not required to be reported under existing law; and

WHEREAS, the cost of Delaware political campaigns has been comparatively low because Delaware has no major network television stations, and Delaware campaigns traditionally rely on door-to-door campaign efforts, local

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advertising and direct mail efforts that are comparatively less expensive than major media markets in surrounding states, and for that reason, disclosure of expenditures intended to influence elections should begin at an amount that is reasonable and intended to promote fulsome disclosure of those expenditures; and

WHEREAS, Delaware political campaigns have long relied on direct contact and communication between candidates and Delawareans at community events, churches, schools, businesses and neighborhood meetings, and to preserve that tradition of open and direct communication, it is important that those who are attempting to influence Delaware elections disclose their identity and efforts in a manner that allows voters to evaluate and measure the statements made by and interests of those third parties in a manner that is prompt and informative.

NOW, THEREFORE:

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

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

(1) "Candidate" means a person who seeks nomination for or election to public office, or who has taken action necessary under the law to qualify for nomination or election under the laws of the State, or has authorized the solicitation of any contribution or the making of any expenditure in that person's behalf.

(2) "Candidate committee" means each political committee formed on behalf of a candidate for public office.

(3) "Cash" includes currency, money orders, travelers checks and other negotiable instruments that do not disclose on their face the true name of the contributor.

(4) "Chapter" includes, in addition to the provisions of this chapter, the rules and regulations made by the Commissioner.

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

~~(5)~~ (6) "Commissioner" means the State Election Commissioner, or the designee of the Commissioner.

(7) "Communications media" means television, radio, newspaper or other periodical, sign, Internet, mail or telephone.

~~(6)~~(8) "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:

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

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

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

e. Forgiveness of indebtedness or payment of indebtedness by another 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 and beverages by an individual volunteering personal services or the individual's residence, or the use of the telephone equipment of any person); or

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

~~(7)~~(9) "Election" means the action by qualified voters of the State either to nominate by vote a candidate for public office or to select a candidate to fill a public office, whether in a primary, general or special election.

~~(8)~~ (10) "Election period" means:

a. For a candidate committee:

1. For a candidate for reelection to an office to which the candidate was elected in the most recent election held therefor, the period beginning on January 1 immediately after the most recent such election, and ending on the December 31 immediately after the general election at which the candidate seeks reelection to the office.

2. For a candidate for reelection to an office which the candidate attained since the last election held therefor (whether the candidate attained the office by succession, appointment or otherwise), the period beginning on the day the candidate succeeded to or was appointed to the office, and ending on the December 31 immediately after the general election at which the candidate seeks reelection to the office.

3. For a candidate for election to an office which the candidate does not hold, the period beginning on the day on which the candidate first receives any contribution from any person (other than from the candidate or from the candidate's spouse) in support of that candidate's candidacy for the office, and ending on the December 31 immediately after the general election at which the candidate seeks election to the office.

4. Notwithstanding the foregoing, for purposes of the limitations under § 8010 of this title on contributions from persons other than political parties and political action committees, for a candidate in a general election who was nominated for such office in a primary election, the election period shall end on the day of the primary and the next election period shall begin on the day after the primary.

b. For a political party and for a political action committee, the period beginning on the January 1 immediately after a general election, and ending on the December 31 immediately after the next general election.

c. For a candidate committee for a person who does not hold public office and who has not taken action necessary under the law to qualify for nomination or election under the laws of the State, the period beginning on the date the first contribution is received or expenditure is made by the committee and ending on the fourth December 31 following such date; provided, however, that if such person takes action necessary under the law to qualify for nomination or election under the laws of the State, the period shall be determined under paragraph (~~8~~10)a. of this section.

d. For a person who makes ~~independent expenditures~~ an expenditure for a third-party advertisement, the election period shall begin and end at the same time as that of the candidate ~~whose election is advocated or opposed by the independent expenditures~~ identified in such advertisement, without regard to paragraph (~~8~~10)a.4. of this section.

(11)a. "Electioneering communication" means a communication by any individual or other person (other than a candidate committee or a political party) that:

1. Refers to a clearly identified candidate; and

2. Is publicly distributed within thirty (30) days before a primary election or special election, or sixty (60) days before a general election to an audience that includes members of the electorate for the office sought by such candidate. For purposes of this section, the term "general election" shall include any annual election for one of more members of a school board pursuant to 14 *Del. C.* § 1072(c).

b. "Electioneering communication" does not include:

1. A communication distributed by a means other than by any communications media;

2. Any membership communication;

3. A communication appearing in a news article, editorial, opinion, or commentary, provided that such communication is not distributed via any communications media owned or controlled by any candidate, political committee or the person purchasing such communication;

4. A communication made in any candidate debate or forum, or which solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

~~(9)~~ (12) "Expenditure" means any payment made or debt incurred by or on behalf of a candidate or political committee, or to assist in the election of any candidate or in connection with any election campaign.

~~(10)~~ (13) "Independent expenditure" means any expenditure made by any individual or other person (other than a candidate committee or a political party) expressly advocating the election or defeat of a clearly identified candidate, which is made without cooperation or consultation with any candidate, or any committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate or any committee or agent of such candidate. An expenditure shall constitute an expenditure in coordination, consultation or concert with a candidate and shall not constitute an independent expenditure where:

a. There is any arrangement, coordination or direction with respect to the expenditure between the candidate or the candidate's agent and the person (including any officer, director, employee or agent of such person) making the expenditure;

b. The person making the expenditure (including any officer, director, employee or agent of such person) has advised or counseled the candidate or the candidate's agents on the candidate's plans, projects or needs relating to the candidate's pursuit of nomination or election, in the same election period, including any advice relating to the candidate's decision to seek office; or

c. The expenditure is based on information provided to the person making the expenditure directly or indirectly by the candidate or the candidate's agents about the candidate's plans, projects or needs; provided, that the candidate or the candidate's agent is aware that the other person has made or is planning to make expenditures advocating the candidate's election.

(14) "Mailing address" means a physical mailing address, and shall not include a post office box.

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

(16) "Officer" means:

a. If used with respect to a corporation, a natural person appointed or designated as an officer of such corporation by or pursuant to applicable law or the certificate of incorporation or bylaws of such corporation, or a person who performs with respect to such corporation functions usually performed by an officer of a corporation. Without limitation of the foregoing, the term "officer" shall include the president, vice president, treasurer, secretary,

chief executive officer, chief operating officer or chief financial officer of such corporation, or their respective equivalents; and

b. If used with respect to an entity other than a natural person or a corporation, a natural person who performs functions usually performed by an officer of a corporation with respect to such entity.

~~(11)~~ (17) "Person" includes any individual, corporation, company, incorporated or unincorporated association, general or limited partnership, society, joint stock company, and any other organization or institution of any nature.

~~(12)~~ (18) "Political action committee" means a political committee which is neither a political party nor a candidate committee.

~~(13)~~ (19) "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 ~~for or against~~ any candidate~~, or candidates~~ candidate committee or political party in an aggregate amount in excess of $500 during an election period, not including independent expenditures; and

b. ~~and includes~~ all political parties~~, political action committees~~ and ~~any~~ candidate committees.

~~(14)~~ (20) "Political party" means an organization eligible to be listed on any general election ballot under § 3001 of this title, or any other organization which desires to be listed on any ballot on any election, and any constituent part of such party which receives contributions and makes expenditures. For purposes of the contribution limits of subchapter II of this chapter, a "political party" includes all constituent parts of such party, including the statewide, county, regional, municipal and district committees, all finance committees and all other committees, subdivisions and organizations related to the political party.

~~(15)~~ (21) "Public office" means an office of this State or any political subdivision thereof which is required by law to be determined by an election.

(22) "Publicly distributed" means aired, broadcast, delivered or otherwise disseminated to members of the public.

(23) "Responsible party" means any natural person who shares or exercises discretion or control over the activities of any entity required to file reports in accordance with this chapter, and shall include any officer, director, partner, proprietor or other natural person who exercises discretion or control over the activities of such entity.

(24) "School board" means the board of education of a reorganized school district consisting of members duly elected or appointed in accordance with Title 14 of this Code.

(25) "Sign" means any outdoor billboard, panel or similar display having an area of at least three (3) square feet.

(26) "Special election" means:

a. For a school board, any election for one or more school board members other than the annual election of members pursuant to 14 *Del. C.* § 1072(c).

b. For any other public office, an election other than a primary or general election to fill a vacancy for public office, created by reason of failure to elect, ineligibility, death, resignation or otherwise, for which there is more than one candidate.

(27) "Third-party advertisement" means an independent expenditure or an electioneering communication.

~~(16)~~ (28) "Treasurer" means the individual appointed by a candidate to assist the candidate with the duties imposed by this chapter.

Section 2. Amend § 8004, Title 15 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 8004. School boards and offices paying under $1,000.

~~(a)~~ Notwithstanding anything provided elsewhere in this chapter, no candidate for election to any school board or to any other public office that pays less than $1,000 per year shall be required to form a candidate committee if that candidate signs under penalty of perjury a statement in a form prepared by the Commissioner, certifying that such candidate does not intend nor expect that the candidate's campaign will receive nor spend, from the date of the first contribution or expenditure on behalf of such candidate's election until the end of the year in which the election for such office is held, more than $2,000. If, notwithstanding the execution of such a statement, such candidate's campaign nevertheless receives more than $2,000 in contributions or expends more than $2,000 (including any contributions or expenditures by the candidate) before the end of the year in which the election for such office is held, the candidate shall within 7 days thereafter, so notify the Commissioner, and shall cause to be filed all reports that would otherwise have been required theretofore under this chapter.

~~(b) No candidate who has filed the statement in subsection (a) of this section shall be required to file any reports with the Commissioner; provided, however, that if such candidate's campaign receives more than $2,000~~

~~in contributions or expends more than $2,000 (including any contributions or expenditures by the candidate) before the end of the year in which the election for such office is held, such committee shall, within 7 days thereafter, so notify the Commissioner and shall file all reports that would otherwise have been required theretofore under this chapter.~~

Section 3. Amend § 8005, Title 15 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

A political committee shall:

(1) ~~No later than 7 days after it first receives any contribution or makes any expenditure, file a complete list of its officers with the Commissioner, one of whom shall be an individual named as its treasurer.~~ 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. The Statement of Organization shall be filed under penalty of perjury, and shall include the following information:

a. The full name and mailing address of the committee;

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

c. A concise statement of the committee's purposes or goals;

d. 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

e. 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.

(2) ~~A political committee must report~~ Report any change in its officers within 7 days after such change becomes effective.

~~(2)~~(3) 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.

~~(3) File with the Commissioner a concise statement of its purposes or goals as a political committee.~~

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

Section 4. Amend §8012(e), Title 15 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(e) ~~A corporation, partnership or other entity~~ Any person ~~(~~other than an individual or a political committee~~)~~ which makes a contribution to a political committee shall notify such political committee in writing of the full names and mailing addresses of (1) all persons who, directly or otherwise, own a legal or equitable interest of 50 percent 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 such corporation, partnership or other entity, or that no such persons exist; and (2) a responsible party, if such contribution would cause the aggregate amount of contributions by such entity during the election period to exceed $1,200. The political committee 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 political committee which received the contribution, shall be liable therefor. A ratable portion of the contribution by the corporation, partnership or other entity shall be deemed to be a contribution under this chapter to the political committee by each such person who owns a 50 percent or greater interest in the entity, shall be included within the limit imposed by this section on individual contributions, and shall be so included in the reports filed by the candidate committee with the Commissioner under § 8030 of this title.

Section 5. Amend §8021, Title 15 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 8021. Identification of purchaser.

(a) All campaign ~~literature or advertising,~~ advertisements having a fair market value of $500 or more, except ~~on~~ printed items with a surface of less than 9 square inches, shall ~~display~~ include prominently the statement: "Paid for by [name of political committee or other person paying for such ~~literature or advertising~~ 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. Learn more about [name of person] at [Commissioner of Elections' web address]."

(c) The Commissioner may adopt regulations regarding the size, 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 be subject to the same requirements.

Section 6. Amend § 8023, Title 15 of the Delaware Code by making deletions as shown by strike through as follows:

~~§ 8023. Independent expenditures~~.

~~(a) All campaign literature, advertising (except on items with a surface of less than 9 square inches) or other message paid for by independent expenditures shall prominently and at all times display the following statement:~~

~~"Paid for by (name of person paying for the literature, advertising or other message). Not authorized nor paid for by any candidate or by any committee of any candidate. The cost of presenting this message is not subject to any campaign contribution limits."~~

~~If the independent expenditure is made or reimbursed by a political action committee or other person other than an individual, the names of the president (or other chief officer) and treasurer of such organization shall be prominently displayed with the rest of the above statement.~~

~~(b) An expenditure shall constitute an expenditure in coordination, consultation or concert with a candidate and shall not constitute an independent expenditure where:~~

~~(1) There is any arrangement, coordination or direction with respect to the expenditure between the candidate or the candidate's agent and the person (including any officer, director, employee or agent of such person) making the expenditure;~~

~~(2) The person making the expenditure (including any officer, director, employee or agent of such person) has advised or counseled the candidate or the candidate's agents on the candidate's plans, projects or needs relating to the candidate's pursuit of nomination or election, in the same election period, including any advice relating to the candidate's decision to seek office;~~

~~(3) The expenditure is based on information provided to the person making the expenditure directly or indirectly by the candidate or the candidate's agents about the candidate's plans, projects or needs; provided, that the candidate or the candidate's agent is aware that the other person has made or is planning to make expenditures advocating the candidate's election.~~

Section 7. Amend § 8030(d)(2), Title 15 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(2) Full name and mailing address of each person who has made contributions to such political committee (including the purchase of tickets for events such as dinners, luncheons, rallies and similar fund-raising events, whether or not the tickets were used by the person who paid for them) 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. If the person who made the contribution is not an individual, and the total amount of contributions by such person during the election period exceeds $1,200, then the report shall also include the name and address of one responsible party for such person;

Section 8. Amend § 8031, Title 15 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

~~§ 8031. Reports of independent expenditures.~~

~~(a) Any person who makes any independent expenditure that causes the aggregate amount of independent expenditures made by such person in an election period to exceed $100 during such election period shall file a report with the Commissioner. Such report shall be filed in accordance with the deadlines provided under § 8030 of this title, and shall contain the information required under § 8030 of this title for all contributions received by and made by such person. Such report shall also include a list of every person to whom any disbursement has been made during the election period in connection with an independent expenditure, together with the date, amount and purpose of such independent expenditure and a statement under penalty of perjury whether each such expenditure has been made in cooperation, consultation or concert with, or at the request or suggestion of, any candidate or any candidate committee or agent of either.~~

~~(b) Any person who makes an independent expenditure aggregating more than $100 after the 20th day, but more than 1 day, before any election shall, within 24 hours after such independent expenditure is made, file with the~~

~~Commissioner a report under oath or affirmation with respect to such independent expenditure that contains the information required by § 8030 of this title and by this section.~~

§ 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 the following:

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

(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;

(4) If a person who made a contribution under paragraph (a)(3) is not an individual, the full name and mailing address of (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 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 or this section, then the reporting period shall begin 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 paragraph (a).

(c) Any person other than an individual that makes a contribution for which disclosure is required under paragraph (a)(3) shall provide written notification in accordance with § 8012(e) of this chapter 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.

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

Section 9. Amend § 8041(1), Title 15 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 8041. Duties and powers of Commissioner.

The Commissioner shall:

(1) Make and publish such rules and regulations not inconsistent with the provisions of this chapter as are necessary to implement and enforce this chapter. Upon their adoption under the provisions of the Administrative Procedures Act [Title 29, Chapter 101], such rules and regulations shall have the force and effect of law. Without limitation of the foregoing, no later than December 31, 2012, the Commissioner shall promulgate all forms required in connection with the filing of reports under this chapter, as well as regulations (a) exempting, to the extent possible, persons from reporting duplicative information hereunder; (b) promulgating standards with respect to the size, layout and timing of the statements required under § 8021 of this chapter; (c) adopting any amendments or modifications to the statements required under § 8021, or exemptions from the requirements thereunder; and (d) adopting procedures for the electronic filing of reports and the posting of said reports to the Commissioner of Elections' web site.

Section 10. This Act shall be known as the Delaware Elections Disclosure Act.

Section 11. This Act shall become effective on January 1, 2013.

Section 12. If any provision of this Act or the application thereof is held invalid, such invalidity shall not affect the provisions of this Act that can be given effect without such invalid provisions or application, and to this end the provisions of this Act are declared to be severable.

Section 13. All campaign advertisements including printed material and/or signs purchased before June 30, 2012 shall be exempt from the requirements of §8021(a) of Title 15.

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