

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2825 Session of  
2008

INTRODUCED BY FREEMAN, ARGALL, BENNINGTON, BOYD, BRENNAN,  
GEORGE, MAHONEY, MELIO, MOUL, NAILOR, M. O'BRIEN, ROCK,  
SIPTROTH, K. SMITH, GIBBONS, SONNEY, GINGRICH, BENNINGHOFF  
AND MURT, OCTOBER 15, 2008

REFERRED TO COMMITTEE ON STATE GOVERNMENT, OCTOBER 15, 2008

AN ACT

1 Amending the act of June 3, 1937 (P.L.1333, No.320), entitled  
2 "An act concerning elections, including general, municipal,  
3 special and primary elections, the nomination of candidates,  
4 primary and election expenses and election contests; creating  
5 and defining membership of county boards of elections;  
6 imposing duties upon the Secretary of the Commonwealth,  
7 courts, county boards of elections, county commissioners;  
8 imposing penalties for violation of the act, and codifying,  
9 revising and consolidating the laws relating thereto; and  
10 repealing certain acts and parts of acts relating to  
11 elections," defining "mass mailing," "public communication,"  
12 "electioneering communication" and "targeting to relevant  
13 electorate"; providing for disclosure of electioneering  
14 communications; and further providing for contributions or  
15 expenditures by national banks, corporations or  
16 unincorporated associations.

17 The General Assembly of the Commonwealth of Pennsylvania  
18 hereby enacts as follows:

19 Section 1. Section 1621 of the act of June 3, 1937  
20 (P.L.1333, No.320), known as the Pennsylvania Election Code, is  
21 amended by adding definitions to read:

22 Section 1621. Definitions.--As used in this article, the  
23 following words have the following meanings:

24 \* \* \*

1     (c.1) The words "electioneering communication" shall mean  
2 the following:

3     (1) Any broadcast, cable or satellite communication which:

4     (i) refers to a clearly identified candidate; and

5     (ii) is made within:

6     (A) sixty (60) days before a municipal, general or special  
7 election for the office sought by the candidate or thirty (30)  
8 days before a primary of a political party that has authority to  
9 nominate a candidate for the office sought by the candidate; and

10    (B) is targeted to the relevant electorate.

11    (2) The term shall not include:

12    (i) a communication appearing in a news story, commentary or  
13 editorial distributed through the facilities of any broadcasting  
14 station, unless such facilities are owned or controlled by any  
15 political party, political committee or candidate;

16    (ii) a communication which constitutes an expenditure or an  
17 independent expenditure under this act;

18    (iii) a communication which constitutes a candidate debate  
19 or forum or which solely promotes such a debate or forum and is  
20 made by or on behalf of the person sponsoring the debate or  
21 forum;

22    (iv) a communication made regarding a candidate for any  
23 local office, including the office of judge of the court of  
24 common pleas;

25    (v) a communication made regarding a candidate for any  
26 political party office; or

27    (vi) any other communication exempted under such regulations  
28 as the Secretary of the Commonwealth may promulgate to ensure  
29 appropriate implementation of this article, except that under  
30 any regulation, a communication may not be exempted if it meets

the requirements of this subclause and is a public communication that refers to a clearly identified candidate for office that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office, regardless of whether the communication expressly advocates a vote for or against a candidate.

\* \* \*

(f.1) The words "mass mailing" shall mean a mailing by United States mail or a facsimile of more than five hundred (500) pieces of mail matter of an identical or substantially similar nature within any thirty-day period.

\* \* \*

(i.1) The words "public communication" shall mean a communication by means of any broadcast, cable, satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, telephone bank to the general public or any other form of general public political advertising.

\* \* \*

(j.1) The words "targeting to relevant electorate" shall mean a communication which refers to a clearly identified candidate, if the communication can be received by:

(1) fifty thousand (50,000) or more persons in this Commonwealth in the case of a candidate for a Statewide office;

(2) twenty thousand (20,000) or more persons in the district the candidate seeks to represent in the case of a candidate for the Senate of the Commonwealth of Pennsylvania; or

(3) five thousand (5,000) or more persons in the district the candidate seeks to represent in the case of a candidate for the House of Representatives of the Commonwealth of Pennsylvania.

1       \* \* \*

2       Section 2. The act is amended by adding a section to read:

3       Section 1626.2. Disclosure of Electioneering

4       Communications.--

5       (a) Every person who makes a disbursement for the direct  
6       costs of producing and airing electioneering communications in  
7       an aggregate amount in excess of ten thousand dollars (\$10,000)  
8       during any calendar year shall, within twenty-four (24) hours of  
9       each disclosure date, file with the appropriate supervisor a  
10       statement containing the information described in subsection  
11       (b). If the twenty-four-hour period ends on a Saturday, Sunday,  
12       holiday or any time after the close of business, the statement  
13       shall be filed on the next business day.

14       (b) Each statement required to be filed under this section  
15       shall be made under penalty of perjury and shall contain the  
16       following information:

17       (1) If the person making the disbursement is an individual,  
18       the name, home address, occupation and employer of the  
19       individual.

20       (2) If the person making the disbursement is not an  
21       individual, the name and address of the person's principal place  
22       of business.

23       (3) The name of any person sharing or exercising direction  
24       or control of the person named under clause (1) or (2), as well  
25       as the name of the custodian of the accounts of the person named  
26       under clause (1) or (2).

27       (4) The amount of each disbursement of more than two hundred  
28       fifty dollars (\$250) during the period covered by the statement  
29       and the name of the person to whom the disbursement was made.

30       (5) The elections to which the electioneering communications

1 pertain and the names, if known, of the candidates identified or  
2 to be identified.

3 (6) If the disbursements were paid out of a segregated bank  
4 account which consists of funds contributed solely by  
5 individuals who are United States citizens or nationals or  
6 lawfully admitted for permanent residence, as defined in section  
7 101(a)(20) of the Immigration and Nationality Act (66 Stat. 163,  
8 8 U.S.C. § 101(a)(20)), the names and addresses of all  
9 contributors who contributed an aggregate amount of one thousand  
10 dollars (\$1,000) or more during the period beginning on the  
11 first day of the preceding calendar year and ending on the  
12 disclosure date. Nothing in this clause shall be construed to  
13 prohibit the use of funds in the segregated account for a  
14 purpose other than electioneering communications.

15 (7) If the disbursements were paid out of funds not  
16 described in clause (6), the names and addresses of all  
17 contributors who contributed an aggregate amount of one thousand  
18 dollars (\$1,000) or more to the person making the disbursement  
19 during the period beginning on the first day of the preceding  
20 calendar year and ending on the disclosure date.

21 (c) For purposes of this section, a person shall be treated  
22 as having made a disbursement if the person has executed a  
23 contract to make the disbursement.

24 (d) Any requirement to report under this section shall be in  
25 addition to any other reporting requirement under this act.

26 (e) Nothing in this section may be construed to establish,  
27 modify or otherwise affect the definition of "political  
28 activities" or "electioneering activities," including the  
29 definition of "participating in, intervening in or influencing  
30 or attempting to influence a political campaign on behalf of or

in opposition to any candidate for public office," for purposes of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

(f) A person who fails to make a statement as required under this section shall be subject to prosecution under 18 Pa.C.S. § 4902 (relating to perjury).

(g) For purposes of this section, the following words and phrases shall have the meaning ascribed in this subsection:

The words "disclosure date" shall mean the first date during any calendar year by which a person has made disbursements for the direct costs of producing or airing electioneering communications aggregating in excess of ten thousand dollars (\$10,000); and any other date during such calendar year by which a person has made disbursements for the direct costs of producing or airing electioneering communications aggregating in excess of ten thousand dollars (\$10,000) since the most recent disclosure date for the calendar year.

Section 3. Section 1633 of the act is amended by adding a subsection to read:

Section 1633. Contributions or Expenditures by National Banks, Corporations or Unincorporated Associations.--\* \* \*

(e) (1) The following shall apply:

(i) An electioneering communication shall be treated as made by an entity described in subsection (a) if an entity pursuant to subsection (a) directly or indirectly disburses any amount for any of the costs of the communication.

(ii) A section 501(c)(4) organization that derives amounts from business activities or receives funds from any entity pursuant to subsection (a) of this section shall be considered to have paid for any communication out of such amounts unless

1 such organization paid for the communication out of a segregated  
2 account to which only individuals can contribute, as described  
3 in section 1626.2(b)(6) of this act.

4 (iii) An electioneering communication does not include a  
5 communication by a section 501(c)(4) organization or a political  
6 organization, as defined in section 527(e)(1) of the Internal  
7 Revenue Code of 1986 (Public Law 95-514, 26 U.S.C. § 1527(e))  
8 made under section 1626.2(b)(6) or (7) of this act if the  
9 communication is paid for exclusively by funds provided directly  
10 by individuals who are United States citizens or nationals or  
11 lawfully admitted for permanent residence, as defined in section  
12 101(a)(20) of the Immigration and Nationality Act (66 Stat. 163,  
13 8 U.S.C. § 101(a)(20)). For purposes of this subclause, the term  
14 "provided directly by individuals" does not include funds the  
15 source of which is an entity described in subsection (a) of this  
16 section.

17 (2) Nothing in this subsection shall be construed to  
18 authorize an organization exempt from taxation under section  
19 501(a) of the Internal Revenue Code of 1986 (Public Law 99-514,  
20 26 U.S.C. § 501(a)) to carry out any activity which is  
21 prohibited under Federal law.

22 (3) An entity described in subsection (a) is prohibited from  
23 expressly advocating for the election or defeat of a candidate.  
24 A communication includes indicia of express advocacy if it  
25 mentions any election, candidate, political party, opposing  
26 candidate or voting by the general public or takes a position on  
27 any candidate's or office holder's character, qualifications or  
28 fitness for office. Content that would support a determination  
29 that a communication has an interpretation other than as an  
30 appeal to vote for or against a clearly identified candidate

1 includes content that:

2 (i) focuses on a public policy issue and either urges a  
3 candidate to take a position on the issue or urges the public to  
4 contact the candidate about the issue;

5 (ii) proposes a commercial transaction, such as purchase of  
6 a book, video or other product or service, or such as  
7 attendance, for a fee, at a film exhibition or other event; or

8 (iii) includes a call to action or other appeal that,  
9 interpreted in conjunction with the rest of the communication,  
10 urges an action other than voting for or against or contributing  
11 to a clearly identified candidate or political party.

12 (4) A person shall be treated as having made a disbursement  
13 if the person has executed a contract to make the disbursement.

14 (5) For purposes of this subsection, the following words and  
15 phrases shall have the meaning ascribed in this clause:

16 The words "section 501(c)(4) organization" shall mean an  
17 organization which:

18 (i) is described in section 501(c)(4) of the Internal  
19 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. 26 §  
20 501(c)(4)) and is exempt from taxation under section 501(a) of  
21 the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C.  
22 § 501(a)); or

23 (ii) has submitted an application to the Internal Revenue  
24 Service for determination of its status as an organization  
25 described in subclause (i).

26 The words "targeted communication" shall mean an  
27 electioneering communication that is distributed from a  
28 television or radio broadcast station or provider of cable or  
29 satellite television service and is targeted to the relevant  
30 electorate.



1       Section 4.   This act shall take effect in 60 days.