

SENATE BILL 781

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CF HB 949

By: **Senator Zucker**

Introduced and read first time: February 3, 2020

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Election Law – Disclosure of Qualifying Paid Digital Communications –**
3 **Revisions**

4 FOR the purpose of repealing a requirement that an online platform maintain and make
5 available to the State Board of Elections on request certain records regarding certain
6 qualifying paid digital communications that a purchaser requests to disseminate
7 through the online platform; requiring an online platform to maintain and make
8 available to the State Board on request, within a certain time period and for at least
9 a certain number of years, certain records regarding certain qualifying paid digital
10 communications that a purchaser requests to disseminate through the online
11 platform; and generally relating to disclosure of qualifying paid digital
12 communications.

13 BY repealing and reenacting, without amendments,
14 Article – Election Law
15 Section 1–101(a), (dd–1), and (ll–1) and 13–405.1
16 Annotated Code of Maryland
17 (2017 Replacement Volume and 2019 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article – Election Law
20 Section 13–405
21 Annotated Code of Maryland
22 (2017 Replacement Volume and 2019 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
24 That the Laws of Maryland read as follows:

25 **Article – Election Law**

26 1–101.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(a) In this article the following words have the meanings indicated unless a different meaning is clearly intended from the context.

(dd–1) “Online platform” means any public–facing website, web application, or digital application, including a social network, ad network, or search engine, that:

(1) has 100,000 or more unique monthly United States visitors or users for a majority of months during the immediately preceding 12 months; and

(2) receives payment for qualifying paid digital communications.

(ll–1) “Qualifying paid digital communication” means any electronic communication that:

(1) is campaign material;

(2) is placed or promoted for a fee on an online platform;

(3) is disseminated to 500 or more individuals; and

(4) does not propose a commercial transaction.

13–405.

(a) (1) A person who directly or indirectly requests placement of a qualifying paid digital communication on an online platform shall expressly notify the online platform at the time the request for placement of a qualifying paid digital communication is made that the communication is a qualifying paid digital communication.

(2) The notice required under paragraph (1) of this subsection:

(i) shall be provided using the method prescribed by the online platform; and

(ii) may not be provided through the inclusion of the authority line required under § 13–401 of this subtitle on the qualifying paid digital communication.

(3) If an online platform does not provide a method for a requester of a qualifying paid digital communication to give notice as required by paragraph (2)(i) of this subsection, the requester shall:

(i) notify the State Board that the online platform is not in compliance with paragraph (2)(i) of this subsection; and

(ii) provide the information required under subsection (b)(6) of this section to the State Board.

(b) (1) An online platform shall make available for public inspection on the Internet in a machine-readable format the records described in paragraph (6) of this subsection regarding qualifying paid digital communications disseminated through the online platform for which the online platform has received notice in accordance with subsection (a) of this section.

(2) An online platform shall allow the public to search the records described in paragraph (6) of this subsection by purchaser.

(3) Except as provided in paragraph (5) of this subsection, the records described in paragraph (6) of this subsection shall be available for public inspection on the Internet in a clearly identifiable location on the online platform's website:

(i) within 48 hours after a qualifying paid digital communication is purchased; and

(ii) for at least 1 year after the general election following the date when the online platform disseminated the qualifying paid digital communication to which the records relate.

(4) For purposes of paragraph (3) of this subsection, a person shall be considered to have purchased a qualifying paid digital communication if the person has executed a contract to purchase a qualifying paid digital communication.

(5) (i) An online platform may apply to the State Board for a compliance waiver to allow the online platform to make the records described in paragraph (6) of this subsection available for public inspection on the Internet within up to 7 days after a qualifying paid digital communication is purchased.

(ii) The State Board shall require an applicant for a compliance waiver under subparagraph (i) of this paragraph to:

1. describe why complying with the requirements under paragraph (3) of this subsection presents an unreasonable burden on the applicant; and

2. present measures the applicant will take to meet the requirements under paragraph (3) of this subsection within 6 months after the date the compliance waiver is granted.

(iii) The State Board may not grant:

1. more than one compliance waiver to an online platform; and

2. a compliance waiver to an online platform within 30 days before an election.

(iv) A compliance waiver is not effective during the 30 days immediately preceding an election.

(v) If an online platform will apply for a compliance waiver under subparagraph (i) of this paragraph, the online platform shall apply for the compliance waiver before receiving payment for a qualifying paid digital communication.

(6) For each qualifying paid digital communication a purchaser requests to disseminate through an online platform and for which the purchaser has provided notice in accordance with subsection (a) of this section, the online platform shall maintain the following records:

(i) for each qualifying paid digital communication purchased by a political committee:

1. the name of the person and any contact information for the person required by the State Board, of the political committee;

2. the treasurer of the political committee; and

3. the total amount paid by the purchaser to the online platform for the placement of the qualifying paid digital communication;

(ii) for each qualifying paid digital communication purchased by a person other than a political committee or an ad network:

1. the name of the person and any contact information for the person required by the State Board, of the person;

2. the identity of the individuals exercising direction or control over the activities of the person, including the chief executive officer or board of directors, if applicable; and

3. the total amount paid by the purchaser to the online platform for the placement of the qualifying paid digital communication; and

(iii) for each qualifying paid digital communication purchased by an ad network:

1. the contact information for the ad network; or

2. a hyperlink to the ad network's website where the contact information is located.

[(c) (1) An online platform shall maintain and make available to the State Board on request the records described in paragraph (3) of this subsection regarding

1 qualifying paid digital communications disseminated through the online platform for which
2 the online platform has received notice in accordance with subsection (a) of this section.

3 (2) The records described in paragraph (3) of this subsection shall be
4 available on the request of the State Board:

5 (i) within 48 hours after a qualifying paid digital communication is
6 first disseminated on the online platform; and

7 (ii) for at least 1 year after the general election following the date
8 when the online platform disseminated the qualifying paid digital communication to which
9 the records relate.

10 (3) For each qualifying paid digital communication a purchaser requests to
11 disseminate through an online platform and for which the purchaser has provided notice
12 in accordance with subsection (a) of this section, the online platform shall maintain the
13 following records:

14 (i) the candidate or ballot issue to which the qualifying paid digital
15 communication relates and whether the qualifying paid digital communication supports or
16 opposes that candidate or ballot issue;

17 (ii) the dates and times that the qualifying paid digital
18 communication was first disseminated and last disseminated;

19 (iii) a digital copy of the content of the qualifying paid digital
20 communication;

21 (iv) an approximate description of the geographic locations where the
22 qualifying paid digital communication was disseminated;

23 (v) an approximate description of the audience that received or was
24 targeted to receive the qualifying paid digital communication; and

25 (vi) the total number of impressions generated by the qualifying paid
26 digital communication.]

27 **(C) (1) FOR EACH QUALIFYING PAID DIGITAL COMMUNICATION A**
28 **PURCHASER REQUESTS TO DISSEMINATE THROUGH AN ONLINE PLATFORM AND FOR**
29 **WHICH THE PURCHASER HAS PROVIDED NOTICE IN ACCORDANCE WITH SUBSECTION**
30 **(A) OF THIS SECTION, THE ONLINE PLATFORM SHALL:**

31 **(I) MAINTAIN THE RECORDS REGARDING THE QUALIFYING**
32 **PAID DIGITAL COMMUNICATION THAT THE ONLINE PLATFORM MAINTAINS IN THE**
33 **ORDINARY COURSE OF ITS BUSINESS OF SELLING ANY FORM OF ADVERTISING ON**
34 **THE ONLINE PLATFORM; AND**

(II) MAKE THE RECORDS DESCRIBED IN ITEM (I) OF THIS PARAGRAPH AVAILABLE TO THE STATE BOARD ON REQUEST:

1. WITHIN 48 HOURS AFTER THE QUALIFYING PAID DIGITAL COMMUNICATION IS FIRST DISSEMINATED ON THE ONLINE PLATFORM; AND

2. FOR AT LEAST 1 YEAR AFTER THE GENERAL ELECTION IMMEDIATELY FOLLOWING THE DATE ON WHICH THE ONLINE PLATFORM DISSEMINATED THE QUALIFYING PAID DIGITAL COMMUNICATION TO WHICH THE RECORDS RELATE.

[(5)] (2) Information obtained by the State Board under this subsection is not subject to inspection under the Public Information Act.

(d) (1) A purchaser of a qualifying paid digital communication shall provide the online platform that disseminates the qualifying paid digital communication with the information necessary for the online platform to comply with subsections (b) and (c) of this section.

(2) An online platform may rely in good faith on the information provided by a purchaser of a qualifying paid digital communication to comply with subsections (b) and (c) of this section.

(e) An online platform shall make reasonable efforts to allow the State Board to:

(1) obtain the information required under subsections (b) and (c) of this section;

(2) obtain the information that a purchaser of a qualifying paid digital communication provided to the online platform in accordance with subsection (d) of this section; and

(3) otherwise request that a purchaser of a qualifying paid digital communication comply with this section or § 13–401 of this subtitle.

(f) An online platform that disseminates qualifying paid digital communications shall make reasonable efforts, in accordance with the federal Stored Communications Act, to comply with any subpoena that is issued in connection with an investigation concerning the compliance of a purchaser of a qualifying paid digital communication with this section or § 13–401 of this subtitle.

13–405.1.

(a) (1) The State Administrator may investigate a potential violation of § 13–401 or § 13–405 of this subtitle by a purchaser of a qualifying paid digital

1 communication.

2 (2) In furtherance of an investigation under paragraph (1) of this
3 subsection, the State Administrator may issue a subpoena for the attendance of a witness
4 to testify or the production of records.

5 (3) A subpoena issued under this subsection shall be served in accordance
6 with the Maryland Rules.

7 (4) If a person fails to comply with a subpoena issued under this subsection,
8 on petition of the State Administrator, a circuit court of competent jurisdiction may compel
9 compliance with the subpoena.

10 (b) (1) At the conclusion of an investigation under subsection (a)(1) of this
11 section, subject to paragraph (2) of this subsection, the State Board may request that the
12 Attorney General institute an action in a circuit court for injunctive relief in accordance
13 with the Maryland Rules to:

14 (i) require a purchaser of a qualifying paid digital communication
15 to comply with § 13–401 or § 13–405 of this subtitle; or

16 (ii) require an online platform to remove a qualified paid digital
17 communication that does not comply with § 13–401 of this subtitle or if the purchaser of
18 the communication does not comply with § 13–405 of this subtitle.

19 (2) Before requesting that the Attorney General seek an injunction under
20 paragraph (1) of this subsection, the State Board shall:

21 (i) notify a purchaser of a qualifying paid digital communication
22 who is the subject of an investigation of the circumstances that gave rise to the
23 investigation; and

24 (ii) provide the person reasonable opportunity to be heard at a public
25 meeting of the State Board.

26 (3) A circuit court may grant injunctive relief under this subsection only if
27 the Attorney General shows by clear and convincing evidence that a violation of § 13–401
28 or § 13–405 of this subtitle is being committed.

29 (4) A person who violates an injunction issued under this subsection is
30 subject to the penalties provided in § 13–605(b) of this title.

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June
32 1, 2020.