

By: Ellis

S.B. No. 1616

A BILL TO BE ENTITLED

AN ACT

relating to expenditures for certain advertising that identifies a candidate; providing a criminal penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 253, Election Code, is amended by adding Section 253.105 to read as follows:

Sec. 253.105. EXPENDITURES FOR CERTAIN TARGETED ADVERTISING PROHIBITED. (a) In this section:

(1) "Advertising" means:

(A) a broadcast, cable, or satellite communication via television or radio that is a paid advertisement or purchased program time; or

(B) a paid message delivered through direct mailing.

(2) "Covered preelection period," with respect to a person, means the period:

(A) beginning on:

(i) the 60th day before the date of a general or special election in which the person is a candidate; or

(ii) the 30th day before the date of a primary election in which the person is a candidate; and

(B) ending on election day.

(3) Advertising is "targeted" in connection with an election if the advertisement is:

1                   (A) a broadcast, cable, or satellite  
2 communication distributed to reach 10,000 or more persons eligible  
3 to vote for the candidate; or

4                   (B) a message delivered through direct mailing  
5 distributed to reach 2,500 or more persons eligible to vote for the  
6 candidate.

7           (b) For purposes of this section, advertising clearly  
8 identifies a candidate if the candidate's name or likeness appears  
9 in the advertising or the identity of the candidate is apparent by  
10 unambiguous reference.

11           (c) This section applies only to expenditures made for  
12 advertising that clearly identifies a candidate for an office of  
13 the state government or an office of a county or municipal  
14 government.

15           (d) Except as provided by Subsection (e), in a covered  
16 preelection period, a corporation or labor organization may not  
17 knowingly make an expenditure from its own property for targeted  
18 advertising that clearly identifies a candidate.

19           (e) This section does not apply to:

20                   (1) a reference to a clearly identified candidate in a  
21 news story, commentary, editorial, or work intended for  
22 entertainment distributed through the facilities of a broadcasting  
23 station, newspaper, magazine, or other publication, unless the  
24 facilities are owned or controlled by a political party, political  
25 committee, or candidate;

26                   (2) nonpartisan activity designed to encourage  
27 persons to vote or to register to vote; or

1           (3) a communication by the labor organization or  
2 corporation to its members, stockholders, or executive or  
3 administrative personnel, if the labor organization or corporation  
4 is not organized primarily for the purpose of influencing the  
5 election of a person to public office.

6           (f) A person who violates this section commits an offense.  
7 An offense under this section is a felony of the third degree.

8           SECTION 2. Subchapter B, Chapter 254, Election Code, is  
9 amended by adding Section 254.0392 to read as follows:

10           Sec. 254.0392. REPORTS CONCERNING CERTAIN TARGETED  
11 ADVERTISING. (a) In this section, "advertising," "covered  
12 preelection period," and "targeted" have the meanings assigned by  
13 Section 253.105.

14           (b) For purposes of this section, advertising clearly  
15 identifies a candidate if the candidate's name or likeness appears  
16 in the advertising or the identity of the candidate is apparent by  
17 unambiguous reference.

18           (c) This section applies only to expenditures made for  
19 advertising that clearly identifies a candidate for an office of  
20 the state government or an office of a county or municipal  
21 government.

22           (d) Except as provided by Subsection (h) or (i), a person  
23 who makes or enters into contracts to make expenditures in a covered  
24 preelection period that in the aggregate exceed \$2,500 in a  
25 calendar year for targeted advertising that clearly identifies a  
26 candidate shall file a report of contributions and expenditures as  
27 provided by this section.

1       (e) A person to whom this section applies shall file two  
2 reports for each year. The first report shall be filed not later  
3 than July 15 and covers the period beginning January 1 and  
4 continuing through June 30. The second report shall be filed not  
5 later than January 15 and covers the period beginning July 1 and  
6 continuing through December 31. If a person exceeds the limit  
7 prescribed by Subsection (d) after the filing deadline for the  
8 first report required under this section, the person shall file a  
9 report not later than the fifth day after the date the limit is  
10 exceeded.

11       (f) Each report under this section must include:

12               (1) the full name and address of:

13                       (A) the person filing the report;

14                       (B) any person sharing or exercising control over  
15 the activities of the person filing the report; and

16                       (C) the custodian of the books and accounts of  
17 the person filing the report;

18               (2) the principal place of business of the person  
19 filing the report, if the person is not an individual;

20               (3) the amount of each expenditure in a covered  
21 preelection period for targeted advertising that clearly  
22 identifies a candidate, that exceeds \$50, and that is made during  
23 the reporting period, and the full name and address of the persons  
24 to whom the expenditures are made;

25               (4) the election to which each targeted advertisement  
26 that clearly identifies a candidate and that is made during the  
27 reporting period relates, and the name of each candidate clearly

1 identified by the advertising; and

2 (5) the amount of contributions from each person that  
3 in the aggregate exceed \$250 and that are accepted during the  
4 reporting period by the person filing the report, and the full name  
5 and address of the person making the contributions.

6 (g) Targeted advertising that clearly identifies a  
7 candidate and that is made in a covered preelection period with the  
8 cooperation or prior consent of, in consultation with, or at the  
9 suggestion of the candidate or a person acting with the candidate's  
10 knowledge and consent is considered:

11 (1) a campaign contribution to the candidate from the  
12 person making the expenditure for the advertising; and

13 (2) a campaign expenditure by the candidate.

14 (h) This section does not apply to:

15 (1) a reference to a clearly identified candidate in a  
16 news story, commentary, editorial, or work intended for  
17 entertainment distributed through the facilities of a broadcasting  
18 station, newspaper, magazine, or other publication, unless the  
19 facilities are owned or controlled by a political party, political  
20 committee, or candidate;

21 (2) nonpartisan activity designed to encourage  
22 persons to vote or to register to vote; or

23 (3) a communication by any membership organization or  
24 corporation to its members, stockholders, or executive or  
25 administrative personnel, if the membership organization or  
26 corporation is not organized primarily for the purpose of  
27 influencing the election of a person to public office.

1        (i) A person is not required to file a report of  
2 contributions and expenditures under this section if the  
3 expenditures are disclosed in a report filed with the Federal  
4 Election Commission.

5        SECTION 3. (a) Section 253.105, Election Code, as added by  
6 this Act, applies only to an expenditure for advertising that is  
7 made on or after September 1, 2003. An expenditure for advertising  
8 that is made before September 1, 2003, is governed by the law in  
9 effect at the time the expenditure was made.

10        (b) Section 254.0392, Election Code, as added by this Act,  
11 applies only to the reporting of an expenditure for advertising  
12 that is made on or after September 1, 2003. An expenditure for  
13 advertising that is made before September 1, 2003, is governed by  
14 the law in effect at the time the expenditure was made and is not  
15 aggregated with expenditures made on or after September 1, 2003.

16        SECTION 4. This Act takes effect September 1, 2003.