

BILL ANALYSIS

C.S.H.B. 1398
By: Murphy
Elections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Texas law provides some guidelines for political advertising relating to providing evidence that the advertisement is political, information about the person sponsoring or funding the advertisement, and other information. Concerned parties contend that these guidelines are not sufficient and that, despite these guidelines, political advertisements may deceive or not clearly identify to readers, observers, or listeners the funding and individual political sponsors of a political advertisement. C.S.H.B. 1398 seeks to set out additional guidelines on political advertising to help voters become better prepared for elections.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1398 amends the Election Code to require a person who knowingly causes to be published, distributed, or broadcast political advertising containing express advocacy to include in the advertising, among other things, the following:

- if the political advertising is authorized by the candidate, for advertising transmitted through radio or television, an audio statement made by the candidate that identifies the candidate and states that the candidate has approved the communication;
- if the political advertising is authorized by the candidate, for advertising transmitted through television, an unobscured, full-screen view of the candidate making the audio statement or a clearly identifiable photographic or similar image of the candidate that is at least 80 percent of the vertical screen height accompanying the audio statement and a written statement, appearing at the end of the communication for not less than four seconds and in letters that are at least four percent of the vertical screen height, that identifies the candidate and states that the candidate has approved the communication;
- if the political advertising is not authorized by the candidate, for advertising transmitted through radio or television, an audio statement of the name of the person who paid for the advertising made by an individual named in the statement or by a representative of a person named in the statement who is not an individual;
- if the political advertising is not authorized by the candidate, for advertising transmitted through television, a written statement, appearing at the end of the communication for not less than four seconds and in letters that are at least four percent of the vertical screen height, that contains the name of the person who paid for the advertising.

C.S.H.B. 1398 requires a disclosure made under the bill's provisions to be presented in a clear and conspicuous manner in order to give the reader, observer, or listener adequate notice of the political committee or other person who authorized and, as applicable, paid for the

communication. The bill specifies that a disclosure is not clear and conspicuous if it is difficult to read, observe, or hear or if the placement is easily overlooked. The bill establishes that a written disclosure satisfies the bill's requirements only if it is clearly readable; is printed in black text on a white background or is printed so that the degree of contrast between the background color and the disclosure text color is at least as great as the degree of contrast between the background color and the color of the largest text in the communication and is printed within a printed box set apart from the rest of the contents of the communication; appears within the advertising and appears on the same side as all other printing on advertising that without the disclosure would be one-sided; is of sufficient type size to be clearly readable; and is in at least 12-point type if the advertising measures not more than 24 inches by 36 inches and is at least 12 pixels if the advertising appears on an Internet website.

C.S.H.B. 1398 requires a written disclosure that complies with the bill's provisions to appear on the appropriate profile page if political advertising appears on a social media website. The bill establishes that a written disclosure appearing on political advertising on an Internet website, including a social media profile page, satisfies the bill's requirements for political advertising on an Internet website that is too small to include the required written disclosure, if the disclosure links to another Internet website page that displays the full disclosure statement and is operational and freely accessible during the time the advertisement is visible. The bill specifies that Internet advertising that is too small to include a written disclosure complying with the bill's provisions includes an advertisement classified as a micro bar or button according to applicable advertising standards, an advertisement that has 200 or fewer characters, and a graphic or picture link in which including the disclosure is not reasonably practical because of the size of the graphic or picture link. The bill requires any political advertising included in a group of materials that, if distributed separately, would require a disclosure to separately include the required disclosure. The bill's provisions governing required disclosure on certain political advertising do not apply to political advertising distributed by sending a text message using a mobile communications service.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1398 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 255.001, Election Code, is amended by amending Subsection (a) and adding Subsections (a-1), (a-2), (a-3), (a-4), and (a-5) to read as follows:

(a) A person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not include [~~indicate~~] in the advertising:

- (1) an indication that it is political advertising; [~~and~~]
- (2) the full name of:
- (A) the person who paid for the political

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 255.001, Election Code, is amended by amending Subsection (a) and adding Subsections (a-1), (a-2), (a-3), (a-4), (a-5), and (a-6) to read as follows:

(a) Same as introduced version.

advertising;

(B) the political committee authorizing the political advertising; or

(C) the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate;

(3) if the political advertising is authorized by the candidate:

(A) for advertising transmitted through radio or television, an audio statement made by the candidate that identifies the candidate and states that the candidate has approved the communication; and

(B) for advertising transmitted through television:

(i) an unobscured, full-screen view of the candidate making the audio statement or a clearly identifiable photographic or similar image of the candidate accompanying the audio statement; and

(ii) a statement in writing identifying the candidate and stating that the candidate has approved the communication that appears:

(a) at the end of the communication for not less than four seconds; and

(b) in letters that are at least four percent of the vertical screen height; and

(4) if the political advertising is not authorized by the candidate:

(A) for advertising transmitted through radio or television, an audio statement of the name of the person who paid for the advertising, made by an individual named in the statement or by a representative of a person named in the statement who is not an individual; and

(B) for advertising transmitted through television, a written statement that contains the name of the person who paid for the advertising and that appears:

(i) at the end of the communication for not less than four seconds; and

(ii) in letters that are at least four percent of the vertical screen height.

(a-1) A disclosure required by this section must be presented in a clear and conspicuous manner, to give the reader, observer, or listener adequate notice of the political committee or other person who authorized and, as applicable, paid for the communication. A disclosure is not clear and conspicuous if it is difficult to read, observe, or hear or if the placement is easily

(a-1) Same as introduced version.

overlooked.

(a-2) A photographic or similar image complies with Subsection (a)(3)(B)(i) only if the image of the candidate is at least 80 percent of the vertical screen height.

(a-3) A written disclosure satisfies the requirements of Subsection (a-1) only if it:
(1) is clearly readable;
(2) is printed in black text on a white background;

(3) appears within the advertising, and appears on the same side as all other printing on advertising that without the disclosure would be one-sided; and
(4) is of sufficient type size to be clearly readable and:
(A) if the advertising measures not more than 24 inches by 36 inches, is in at least 12-point type; and
(B) if the advertising appears on an Internet website, is at least 12 pixels.

(a-4) In addition to the requirements of Subsection (a-3), a written disclosure appearing on political advertising on an Internet website satisfies the requirements of Subsection (a-1) only if a reader can see the disclosure at the same time as any communication or portion of a communication constituting political advertising on the website, without viewing a different display screen or accessing a different file or network location.

(a-2) Same as introduced version.

(a-3) A written disclosure satisfies the requirements of Subsection (a-1) only if it:
(1) is clearly readable;
(2) is printed:

(A) in black text on a white background or is printed so that the degree of contrast between the background color and the disclosure text color is at least as great as the degree of contrast between the background color and the color of the largest text in the communication; and

(B) within a printed box set apart from the rest of the contents of the communication;

(3) appears within the advertising, and appears on the same side as all other printing on advertising that without the disclosure would be one-sided; and
(4) is of sufficient type size to be clearly readable and:

(A) if the advertising measures not more than 24 inches by 36 inches, is in at least 12-point type; and

(B) if the advertising appears on an Internet website, is at least 12 pixels.

(a-4) If political advertising appears on a social media website, a written disclosure that complies with Subsection (a-1) and this subsection must appear on the appropriate social media profile page. If political advertising on an Internet website is too small to include the written disclosure in a manner that complies with Subsection (a-1), a written disclosure appearing on political advertising on an Internet website, including a social media profile page, satisfies the requirements of Subsection (a-1) if the disclosure links to another Internet website page that displays the full disclosure statement and is operational and freely accessible during the time the advertisement is visible. Internet advertising that is too small to include a written disclosure complying with Subsection (a-1) includes an advertisement classified as a micro bar or button according to applicable advertising standards, an advertisement that has 200 or fewer characters, and a graphic or picture

link in which including the disclosure is not reasonably practical because of the size of the graphic or picture link.

(a-5) Any political advertising included in a group of materials that, if distributed separately, would require a disclosure under this section must separately include the required disclosure.

No equivalent provision.

SECTION 2. This Act takes effect September 1, 2013.

(a-5) Same as introduced version.

(a-6) Subsection (a) does not apply to political advertising distributed by sending a text message using a mobile communications service.

SECTION 2. Same as introduced version.