

Recent Changes to the Political Reform Act

Below are summaries of the legislative and regulatory changes made to the Political Reform Act (Act) in 2019. All of the legislative provisions except for AB 571 and AB 909 take effect January 1, 2020. To view the full text of the bills, visit: <http://leginfo.legislature.ca.gov/>. To view the full text of the FPPC regulations, visit: <http://www.fppc.ca.gov/the-law/fppc-regulations.html>.

Legislative

Text message disclosures: Requires a candidate or committee to disclose the name of the candidate or committee in certain text message ads sent using mass distribution technology either directly in the text message or via a hyperlink in the text message. The bill sets forth standards for color and size of the text in the text message and disclosures on the linked website. The disclosure requirements depend on the type of committee paying for the advertisement. Disclosure requirements are also dependent on the sender of the text: paid staff, volunteer, or mass distribution technology. There are additional exceptions in the legislation. This bill is operative January 1, 2020. (AB 201 (Cervantes) – Chapter 555, Statutes 2019)

Campaign funds: childcare expenses: Authorizes the use of campaign funds to pay or reimburse for childcare expenses directly resulting from a candidate engaging in campaign activities. The bill also permits the use of campaign funds for childcare expenses resulting from an officeholder engaging in activities that are both political and legislative or governmental. “Childcare expenses” are defined as reasonable costs of professional daycare services, babysitting, and nanny services among other expenses. Prohibited expenses include private school tuition, medical expenses, tutoring services, or payments to a relative for childcare services unless the relative’s activities meet the exception in the bill text. (AB 220 (Bonta) – Chapter 384, Statutes of 2019)

Contribution limits: Establishes a contribution limit for city and county elections, equal to state legislative limits, to be regulated and enforced by the FPPC. Jurisdictions with existing limits or adopting their own limits are not subject to the state legislative limit. The Commission will not enforce a contribution limit adopted by local jurisdictions. Does not apply to special districts. (AB 571 (Mullin) – Chapter 556, Statutes of 2019)

Disclose Act amendments: Makes various changes to the DISCLOSE Act, including:

- Exempts from the definition of “mass electronic mailing” communications that are solicited by the recipients
- Exempts from the definition of “advertisement” communications that are received as a result of a customer expressly opting in to receive political communications from a provider of goods or services
- Clarifies disclosure requirements for print advertisements larger than those designed to be individually distributed
- Further defines “online platform” and “online platform disclosed advertisement”

- Corrects conflict from AB 249 related to electronic media ads and applicable disclosures for political party committees and candidate-controlled committees who pay for independent expenditure ads supporting or opposing a ballot measure

(AB 864 (Mullin) – Chapter 558, Statutes of 2019)

Codification of Commission regulations: Enters certain FPPC regulations into the Political Reform Act. These regulations have been identified by commission staff as being longstanding and non-controversial. These amendments include:

- Extensions for filing deadlines that fall on a weekend or holiday
- Duties of filing officers
- Definition of “candidate”
- Definition of “aggregated contributions”
- Definition of “lobbying coalition” and other conforming changes
- Definition of “spouse”
- Designation of an “assistant treasurer”
- When to update Top 10 Contributors list under section 84223
- How a public official discloses leasehold interests
- When a gift is received and accepted
- The scope of audits and investigations

(AB 902 (Mullin) – Chapter 312, Statutes of 2019)

Clarifying amendments to the Political Reform Act: Clarifies various sections of the Political Reform Act. In addition to non-substantive changes, clarifies preelection reporting requirements and clarifies that under certain conditions communications paid for with public moneys by state or local government agencies are considered expenditures. (AB 903 (Levine) – Chapter 102, Statutes of 2019)

Treasurer acknowledgement: Requires an additional acknowledgement of duties and liabilities by a treasurer or assistant treasurer recognized on the Form 410, or Statement of Organization. This additional acknowledgement is a separate statement required to be filed with the Secretary of State. The statement is filed at the same time as the Statement of Organization or an amendment identifying a new treasurer or assistant treasurer. (AB 909 (Gallagher) – Chapter 313, Statutes of 2019)

Omnibus non-substantive changes: Repeals expired provisions of the Act that are no longer applicable or that are now antiquated. (AB 946 (Assembly Elections Committee) – Chapter 315, Statutes of 2019)

Campaign funds: cybersecurity: Allows the use of campaign funds to pay or reimburse for cybersecurity protections including hardware, software, and services related to the electronic devices of a candidate, elected officer, or campaign worker. The bill requires the disclosure and reporting of any cybersecurity expenditures using campaign funds to the FPPC in the candidate or elected officer’s campaign statements. (AB 1043 (Irwin) – Chapter 46, Statutes of 2019)

Campaign expenditure limitations: sexual assault, abuse, and harassment claims:

Allows the expenditure of funds in a campaign committee or legal defense fund to pay for a candidate or elected official's legal costs and expenses related to claims of sexual assault, sexual harassment, or sexual abuse. However, if the candidate is "held liable for such a violation," the candidate or elected official would be required to reimburse the committee account for all funds used in connection with those legal costs and expenses. Funds from a candidate's committee or legal defense fund may not be used to pay or reimburse for a penalty, judgement, or settlement related to these claims. (SB 71 (Leyva) – Chapter 564, Statutes of 2019)

Cal-Access implementation delay: Extends the launch date of the Secretary of State's new Cal-Access filing and disclosure system to February 2021. There is no provision allowing for an extension. (SB 84 (Senate Budget and Fiscal Review Committee) – Chapter 30, Statutes of 2019)

Regulatory

Campaign Changes

Regulation 18422 – Multipurpose Organization Political Activity Transparency and Regulation 18422.1 – Required Recordkeeping for Multipurpose Organizations:

Amendments to Regulation 18422 and adoption of Regulation 18422.1 provide greater detail and clarity regarding the record keeping requirements for multipurpose organization subject to Section 84222.

Regulations 18435, 18450.2, 18450.3, and 18450.4 – Disclose Act: Amendments to Regulation 18435 clarify the disclosure requirements for mass mailings. New Regulations 18450.2, 18450.3 and 18450.4 define the phrase "authorized and paid for" as used in the statutory definition of "advertisement;" clarify the top contributor disclosure for major donor committees that qualify as top contributors by virtue of affiliated entities; and address the required length of a disclosure for a video or television advertisement lasting less than four or five seconds.

Conflict of Interest Materiality Changes

Regulation 18702.1 – Materiality Standard: Financial Interest in Business Entity:

Amendments establish a bright-line materiality standard for evaluating whether it is reasonably foreseeable a government decision will have a material financial effect on an official's interest in a business entity.

Regulation 18702.2 – Materiality Standard: Financial Interest in Real Property:

Amendments establish a bright-line materiality standard for evaluating whether it is reasonably foreseeable a government decision will have a material financial effect on an official's interest in real property.

Regulation 18702.3 – Materiality Standard: Financial Interest in a Source of Income:

Amendments establish a bright-line materiality standard for evaluating whether it is reasonably foreseeable a government decision will have a material financial effect on a source of income to an official.

Regulation 18702.4 – Materiality Standard: Financial Interest in Source of Gift:

Amendments establish a bright-line materiality standard for evaluating whether it is reasonably foreseeable a government decision will have a material financial effect on a non-profit organization that provides gifts to a public official.

Regulation 18702.5 – Materiality Standard: Financial Interest in an Official’s Personal Finances:

Amendments establish a bright-line materiality standard for evaluating whether it is reasonably foreseeable a government decision will have a material financial effect on an official’s personal finances.

Gifts Changes

Regulation 18944.1 – Gifts: Agency Provided Tickets or Passes: Amendments clarify the requirements for agency-provided tickets or passes to be exempt from qualification as gifts under the Act.

Regulation 18946 – Valuation of Gifts and Regulation 18946.1 – Exception- Valuation of Gifts: Passes and Tickets: In conjunction with amendments to Regulation 18944.1, amendments change the term “face value” to “fair value” and add language to clarify the definition of “fair value” specifying that, where the price indicated on the ticket does not reflect the actual cost for a ticket in a luxury box or suite, the value is determined by dividing the total cost of the box or suite by the number of tickets available for that box or suite.

Enforcement Changes

Regulation 18360.1 – Eligibility Requirements and Considerations -Streamline and Warning Letters and Regulation 18360.2 – Penalties in Streamline Cases: New regulations codify and expand the Commission’s Streamline Settlement Program.

Regulation 18998 – Commission Audits and Investigations: New regulation clarifies the auditing guidelines and standards applied by Commission staff in conducting mandatory and discretionary audits and investigations.

Other Regulations

Regulations 18308, 18308.1, 18308.2 & 18308.3 – Commission Governance: These regulations were repealed. The Commission adopted new governance principles to be placed in an internal policy rather than in regulation.

Regulation 18329 – Formal Written Advice and Informal Assistance: Amendments update and re-organize the prior version of the regulation to reflect current formal advice and informal assistance practices, detail the process for Commission actions in responding to written requests, and provide clarity for requestors as to their rights and duties in requesting and receiving advice.

Regulation 18756 – Statements of Economic Interests: Certification of Electronic Filing Systems: Amendments codify the requirement that an agency’s electronic filing system meet the data exchange requirements necessary for the agency’s system to properly function with the FPPC’s electronic filing system in order to obtain certification of the agency’s system from the FPPC.