

ASSEMBLY, No. 1056

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman DORIA

1 AN ACT concerning campaign advertisements, amending and
2 supplementing P.L.1973, c.83 (C.19:44A-1 et seq.), and repealing
3 parts of the statutory law.

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5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

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8 1. (New section) The Legislature finds and declares that:

9 a. in McIntyre v. Ohio, 63 U.S.L.W. 4279 (U.S. April 19, 1995)
10 (No. 93-986), the United States Supreme Court invalidated, on First
11 Amendment grounds, an Ohio statute prohibiting the distribution of

12 campaign materials which did not bear the issuer's name and address;
13 b. nevertheless, this decision recognized that there may be
14 circumstances in which a state's enforcement interest justifies a more
15 limited identification requirement;

16 c. the court noted that in the area of campaign finance, in
17 particular, a more narrowly drawn statute may be permitted;

18 d. prior decisions of the United States Supreme Court have
19 established that regulation of campaign finance may be justified by a
20 state's interest in preventing actual or perceived corruption; and

21 e. because the McIntyre decision calls into question the validity of
22 certain New Jersey statutes requiring disclosures on campaign
23 advertising, there is a need to revise the law so that it is
24 narrowly-tailored to help effectuate the State's compelling interest in
25 preventing corruption in connection with the financing of campaigns
26 for public office.

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28 2. (New section) a. Whenever a candidate committee, joint
29 candidates committee, political committee, continuing political
30 committee, political party committee or legislative leadership
31 committee, or any group other than such a committee, or any person
32 makes, incurs or authorizes an expenditure for the purpose of

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 financing a communication aiding or promoting the nomination,
2 election or defeat of any candidate or providing political information
3 on any candidate which is an expenditure that the committee, group or
4 person is required to report to the Election Law Enforcement
5 Commission pursuant to P.L.1973, c.83 (C.19:44A-1 et seq.), the
6 communication shall clearly state the name and business or residence
7 address of the committee, group or person, as that information appears
8 on reports filed with the commission, and that the communication has
9 been financed by that committee, group or person.

10 b. Whenever a candidate committee, joint candidates committee,
11 political committee, continuing political committee, political party
12 committee or legislative leadership committee, or any group other than
13 such a committee, or any person makes, incurs or authorizes an
14 expenditure for the purpose of financing a communication aiding the
15 passage or defeat of any public question or providing political
16 information on any public question which is an expenditure that the
17 committee, group or person is required to report to the Election Law
18 Enforcement Commission pursuant to P.L.1973, c.83 (C.19:44A-1 et
19 seq.), the communication shall clearly state the name and business or
20 residence address of the committee, group or person, as that
21 information appears on reports filed with the commission, and that the
22 communication has been financed by that committee, group or person.

23 c. A communication that is financed by any person, not acting in
24 concert with a candidate or any person or committee acting on behalf
25 of a candidate, shall contain a clear and conspicuous statement that the
26 expenditure was not made with the cooperation or prior consent of, or
27 in consultation with or at the request or suggestion of, any such
28 candidate, person or committee.

29 d. Any person who accepts compensation from a committee, group
30 or individual described in subsection a. or b. of this section for the
31 purpose of printing, broadcasting, or otherwise disseminating to the
32 electorate a communication shall maintain a record of the transaction
33 which shall include an exact copy of the communication and a
34 statement of the number of copies made or the dates and times that the
35 communication was broadcast, and the name and address of the
36 committee, group or individual paying for the communication. The
37 record shall be maintained on file at the principal office of the person
38 accepting the communication for at least two years and shall be
39 available for public inspection during normal business hours.

40 e. As used in this section, "communication" means a press release,
41 pamphlet, flyer, form letter, sign, billboard or paid advertisement
42 printed in any newspaper or other publication or broadcast on radio or
43 television, or any other form of advertising directed to the electorate.

44 f. The provisions of this section shall not be construed to apply to
45 any bona fide news item or editorial contained in any publication of
46 bona fide general circulation.

1 g. (1) A person who violates a provision of this section shall be
2 subject to the civil penalties provided in section 22 of P.L.1973, c.83
3 (C.19:44A-1 et seq.) C.19:44A-22).

4 (2) A person who, with intent to injure anyone or to conceal
5 wrongdoing, purposely falsifies, conceals or misrepresents information
6 required by this section to be disclosed or maintained on file is guilty
7 of a crime of the fourth degree.

8 h. The Election Law Enforcement Commission shall promulgate
9 rules and regulations pursuant to the "Administrative Procedure Act,"
10 P.L.1968, c.410 (C.52:14B-1 et seq.) to effectuate the purpose of this
11 section. The commission may, by regulation, exempt from the
12 provisions of this section small, tangible items of de minimis value
13 which are commonly used in campaigns to convey a political message,
14 including, but not limited to, buttons, combs, and nail files. The
15 commission may also, by regulation, exempt from the provisions of
16 this section advertising space purchased by a candidate committee,
17 joint candidates committee, political committee, continuing political
18 committee, political party committee, legislative leadership committee
19 or other person, in a political program book distributed at a
20 fund-raising event if the financial transaction is otherwise subject to
21 disclosure. An exemption granted by the commission with respect to
22 any item shall not relieve the committee, group or individual making
23 an expenditure therefor from any applicable campaign finance
24 reporting requirements.

25 In addition, the commission shall have the authority to provide, by
26 regulation, that a communication need not include the address of the
27 committee, group or person financing the communication in
28 circumstances where the name of a committee, group or person would
29 be sufficient to identify it from the commission's records.

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31 3. Section 11 of P.L.1973, c.83 (C.19:44A-11) is amended to read
32 as follows:

33 11. No contribution of money or other thing of value, nor
34 obligation therefor, including but not limited to contributions, loans or
35 obligations of a candidate himself or of his family, shall be made or
36 received, and no expenditure of money or other thing of value, nor
37 obligation therefor, including expenditures, loans or obligations of a
38 candidate himself or of his family, shall be made or incurred, directly
39 or indirectly, to support or defeat a candidate in any election, or to aid
40 the passage or defeat of any public question, except through:

41 a. The duly appointed campaign treasurer or deputy campaign
42 treasurers of the candidate committee or joint candidates committee;

43 b. The duly appointed organizational treasurer or deputy
44 organizational treasurers of a political party committee or a continuing
45 political committee;

46 c. The duly appointed campaign treasurer or deputy campaign

1 treasurers of a political committee; or

2 d. The duly appointed organizational treasurer or deputy
3 organizational treasurer of a legislative leadership committee.

4 It shall be lawful, however, for any person, not acting in concert
5 with any other person or group, to expend personally from his own
6 funds a sum which is not to be repaid to him for any purpose not
7 prohibited by law, or to contribute his own personal services and
8 personal traveling expenses, to support or defeat a candidate or to aid
9 the passage or defeat of a public question; provided, however, that any
10 person making such expenditure shall be required to report his or her
11 name and mailing address and the amount of all such expenditures and
12 expenses, except personal traveling expenses, if the total of the money
13 so expended, exclusive of such traveling expenses, exceeds[\$200]
14 \$500, and also, where the person is an individual, to report the
15 individual's occupation and the name and mailing address of the
16 individual's employer, to the Election Law Enforcement Commission
17 at the same time and in the same manner as a political committee
18 subject to the provisions of section 8 of this act.

19 No contribution of money shall be made in currency, except
20 contributions in response to a public solicitation, provided that
21 cumulative currency contributions of up to \$200 may be made to a
22 candidate committee or joint candidates committee, a political
23 committee, a continuing political committee, a legislative leadership
24 committee or a political party committee if the contributor submits
25 with the currency contribution a written statement of a form as
26 prescribed by the commission, indicating the contributor's name,
27 mailing address and occupation and the amount of the contribution,
28 including the contributor's signature and the name and mailing address
29 of the contributor's employer.

30 Any anonymous contribution received by a campaign treasurer or
31 deputy campaign treasurer shall not be used or expended, but shall be
32 returned to the donor, if his identity is known, and if no donor is
33 found, the contribution shall escheat to the State.

34 No person, partnership or association, either directly or through an
35 agent, shall make any loan or advance, the proceeds of which that
36 person, partnership or association knows or has reason to know or
37 believe are intended to be used by the recipient thereof to make a
38 contribution or expenditure, except by check or money order
39 identifying the name, mailing address and occupation or business of
40 the maker of the loan, and, if the maker is an individual, the name and
41 mailing address of that individual's employer; provided, however, that
42 such loans or advances to a single individual, up to a cumulative
43 amount of \$50 in any calendar year, may be made in currency.

44 (cf: P.L.1993, c.65, s.6)

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46 4. Sections 2 through 5 of P.L.1963, c.57 (C.19:34-38.1 et seq.),

1 P.L.1966, c.70 (C.19:34-38.5), N.J.S.18A:14-97, and
2 N.J.S.18A:14-97.1, N.J.S.18A:14-97.2 and N.J.S.18A:14-97.3 are
3 repealed.

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5 5. This act shall take effect on February 1 next following the date
6 of enactment.

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STATEMENT

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11 This bill provides that whenever any committee, group or person
12 makes an expenditure to finance a communication aiding or promoting
13 the nomination, election or defeat of any candidate or the passage or
14 defeat of any public question, or providing political information on any
15 candidate or public question, which expenditure must be reported to
16 the Election Law Enforcement Commission (ELEC) under "The New
17 Jersey Campaign Contributions and Expenditures Reporting Act,"
18 N.J.S.A.19:44A-1 et seq., the communication must clearly state the
19 name and business or residence address of the committee, group or
20 individual in the same manner as that information appears on reports
21 filed with ELEC, and that the communication has been financed by
22 that committee, group or person. The purpose of this disclosure is to
23 prevent the possible circumvention of the campaign expenditure
24 reporting requirements which could result from the large-scale
25 dissemination of anonymous campaign materials.

26 In addition, the bill requires that a communication financed by a
27 person not acting in concert with a candidate or candidate-related
28 party shall contain a statement to that effect.

29 The bill defines "communication" to include a press release,
30 pamphlet, flyer, form letter, sign, billboard or paid advertisement
31 printed in any newspaper or other publication or broadcast on radio or
32 television, or any other form of advertising directed at the public. Its
33 provisions would not apply to any bona fide news item or editorial
34 contained in any publication of bona fide general circulation. The bill
35 also provides that a person who accepts compensation for
36 disseminating a communication must keep a record of the
37 communication for two years thereafter.

38 A person who violates a provision of the legislation would be
39 subject to the civil penalties provided under section 22 of P.L.1973,
40 c.83 (C.19:44A-22). A person who, with intent to injure anyone or to
41 conceal wrongdoing, purposely falsifies, conceals or misrepresents
42 information required by the bill to be disclosed or maintained on file
43 would be guilty of a crime of the fourth degree.

44 The bill directs ELEC to promulgate regulations effectuating the
45 provisions of the legislation.

1 The bill would also amend existing law to increase the threshold for
2 reporting independent expenditures to ELEC from 200 to \$500. This
3 threshold would also be applicable to the disclosures in connection
4 with communications financed by independent expenditures.

5 The following would be repealed under the legislation: sections 2
6 through 5 of P.L.1963, c.57 (C.19:34-38.1 et seq.), P.L.1966, c.70
7 (C.19:34-38.5), N.J.S.18A:14-97, and N.J.S.18A:14-97.1,
8 N.J.S.18A:14-97.2 and N.J.S.18A:14-97.3.

9 At present, New Jersey law requires campaign advertising materials
10 to disclose the name and address of the person causing the material to
11 be printed, copied or published, or of the person paying for the
12 printing, copying or publishing, as well as the name and address of the
13 person who prints, copies or publishes the material. However, the
14 constitutionality of the relevant current law has been called into
15 question by the recent decision of the United States Supreme Court in
16 McIntyre v. Ohio, 63 U.S.L.W. 4279 (U.S. April 19, 1995) (No.
17 93-986) which held that a similar Ohio law abridged freedom of
18 speech. The McIntyre decision, nevertheless, acknowledged that a
19 more narrowly-drawn statute, particularly one which promotes a
20 state's interest in enforcing its campaign finance laws, may be
21 permissible. This bill would repeal the existing campaign advertising
22 laws. The new disclaimer provisions of the bill are intended to require,
23 within the bounds permitted by the Supreme Court, certain limited
24 disclosures on campaign advertising materials in furtherance of the
25 State's compelling interest in preventing actual or perceived corruption
26 in the area of campaign finance.

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31 Revises law concerning campaign advertising disclosures.