

CHAPTER 2021-49

Senate Bill No. 82

An act relating to sponsorship identification disclaimers; amending s. 106.011, F.S.; revising the definition of the term “electioneering communication” to conform to changes made by the act; amending s. 106.071, F.S.; modifying provisions governing general independent expenditure disclaimers to conform to changes made by the act; amending s. 106.143, F.S.; removing an exemption for text messages from certain requirements governing political advertisement disclaimers to conform to changes made by the act; amending s. 106.1439, F.S.; modifying provisions governing general electioneering communications disclaimer requirements to conform to changes made by the act; amending s. 106.147, F.S.; establishing sponsorship identification disclaimer requirements for certain text messages; modifying existing requirements governing telephone call disclaimers; providing exceptions and restrictions; providing a penalty; revising the definition of the term “person” to conform to changes made by the act; amending s. 106.1475, F.S.; requiring specified persons and organizations sending certain paid text messages to have and maintain a registered agent for specified purposes; providing exceptions; providing a penalty; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (8) of section 106.011, Florida Statutes, is amended to read:

106.011 Definitions.—As used in this chapter, the following terms have the following meanings unless the context clearly indicates otherwise:

(8)(a) “Electioneering communication” means a text message or communication that is publicly distributed by a television station, radio station, cable television system, satellite system, newspaper, magazine, direct mail, or telephone which ~~and that~~:

1. Refers to or depicts a clearly identified candidate for office without expressly advocating the election or defeat of a candidate but that is susceptible of no reasonable interpretation other than an appeal to vote for or against a specific candidate;

2. Is made within 30 days before a primary or special primary election or 60 days before any other election for the office sought by the candidate; and

3. Is targeted to the relevant electorate in the geographic area the candidate would represent if elected.

Section 2. Subsection (2) of section 106.071, Florida Statutes, is amended to read:

106.071 Independent expenditures; electioneering communications; reports; disclaimers.—

(2) Any political advertisement, other than a text message or a telephone call, paid for by an independent expenditure must shall prominently state “Paid political advertisement paid for by ...(Name and address of person paying for advertisement)... independently of any ...(candidate or committee)....”

Section 3. Paragraph (f) of subsection (10) of section 106.143, Florida Statutes, is amended to read:

106.143 Political advertisements circulated prior to election; requirements.—

(10) This section does not apply to any campaign message or political advertisement used by a candidate and the candidate’s supporters or by a political committee if the message or advertisement is:

~~(f) Distributed as a text message or other message via Short Message Service, provided the message is no more than 200 characters in length or requires the recipient to sign up or opt in to receive it.~~

Section 4. Section 106.1439, Florida Statutes, is amended to read:

106.1439 Electioneering communications; disclaimers.—

(1) Any electioneering communication, other than a text message or a telephone call, must shall prominently state: “Paid electioneering communication paid for by ...(Name and address of person paying for the communication)....”

~~(2) Any electioneering communication telephone call shall identify the persons or organizations sponsoring the call by stating either: “Paid for by ... (insert name of persons or organizations sponsoring the call)....” or “Paid for on behalf of ... (insert name of persons or organizations authorizing call)....” This subsection does not apply to any telephone call in which the individual making the call is not being paid and the individuals participating in the call know each other prior to the call.~~

~~(2)(3)~~ Any person who fails to include the disclaimer prescribed in this section in any electioneering communication that is required to contain such disclaimer commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 5. Section 106.147, Florida Statutes, is amended to read:

106.147 Text message and telephone solicitation; disclosure requirements; prohibitions; exemptions; penalties.—

(1)(a) Any text message or telephone call supporting or opposing a candidate, an elected public official, or a ballot measure, and any electioneering text message or telephone call, must include the phrase proposal must identify the persons or organizations sponsoring the call by stating either: "Paid for by,," followed by the (insert name of the persons or organizations sponsoring the message or call) or, in the case of a text message, a working hyperlink or a uniform resource locator (URL) to a website containing the required disclosure "paid for on behalf of,," (insert name of persons or organizations authorizing call).

(b) A candidate's text message or telephone call must include the phrase "Paid for by," followed by the name of the candidate, then followed by the word "For," and the name of the elective office sought.

(c) A website that is hyperlinked, or identified by URL, in a text message must remain online and available to the public for at least 30 days after the date of the election in which the candidate or ballot measure that the advertisement supported or opposed was voted on.

(d)1. If an exchange consists of a sequence of multiple text messages sent on the same day, the sponsorship disclaimer is only required to be included with the first text message.

2. A person or an organization is deemed to be in compliance with this subsection if the sponsorship disclaimer required by this subsection is included in the text message in the form in which the person or organization intended it to be sent, regardless of the form the carrier relayed it to the recipient.

3. If a person or an organization includes a working hyperlink or URL in the text message as part of the required disclaimer, the person or organization is deemed to be in compliance with this subsection even if the recipient's device is incapable of accessing the referenced website.

(e) This subsection ~~paragraph~~ does not apply to any:

1. Telephone call:

a. In which both the individual making the call is not being paid and the individuals participating in the call know each other ~~before~~ prior to the call; or

b. That is a part of a series of like telephone calls consisting of fewer than 1,000 completed calls averaging more than 2 minutes in duration which are conducted for the purpose of polling respondents regarding a candidate or an elected public official.

2. Text message:

a. In which both the individual sending the text message is not being paid and the text is individually sent without the assistance of mass distribution technology, including a text messaging platform; or

b. That requires the recipient to sign up or opt in to receive it.

~~(b)—Any telephone call conducted for the purpose of polling respondents concerning a candidate or elected public official which is a part of a series of like telephone calls that consists of fewer than 1,000 completed calls and averages more than 2 minutes in duration is presumed to be a political poll and not subject to the provisions of paragraph (a).~~

~~(2)(e) A text message or a No telephone call may not shall state or imply that the caller:~~

~~(a) Represents any person or organization unless the person or organization so represented has given specific approval in writing to make such representation; or-~~

~~(d)—No telephone call shall state or imply that the caller~~

~~(b) Represents a nonexistent person or organization.~~

~~(3)(2) Any text message or telephone call, not conducted by independent expenditure, which expressly advocates for or against a candidate or ballot measure proposal requires prior written authorization by the candidate or sponsor of the ballot measure proposal that the text message or telephone call supports. A copy of such written authorization must be placed on file with the qualifying officer by the candidate or sponsor of the ballot measure before proposal prior to the time the text messages or telephone calls commence.~~

~~(4)(a)(3)(a) Any person who willfully violates any provision of this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.~~

~~(b) For purposes of paragraph (a), the term “person” includes any individual or organization making an independent expenditure; any candidate; any officer of any political committee, affiliated party committee, or political party executive committee; any officer, partner, attorney, or other representative of a corporation, partnership, or other business entity; and any agent or other person acting on behalf of any candidate, political committee, affiliated party committee, political party executive committee, or corporation, partnership, or other business entity.~~

Section 6. Section 106.1475, Florida Statutes, is amended to read:

106.1475 Text message and telephone solicitation; registered agent requirements; penalty.—

(1) Any person or organization that conducts ~~any~~ business in this state consisting of sending text messages or placing telephone calls that are subject to the disclaimer requirements in s. 106.147 ~~which consists of making paid telephone calls supporting or opposing any candidate or elected public official~~ must, prior to conducting such business, have and continuously maintain, for at least 180 days following the cessation of such business activities in the state, a registered agent for the purpose of any service of process, notice, or demand required or authorized by law and must file with the division a notice of such registered agent. Such registered agent must be an individual who is a resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state. However, this subsection does not apply to any person or organization already lawfully registered to conduct business in this state.

(2) For purposes of this section, conducting business in this state as specified in subsection (1) includes both sending text messages or placing telephone calls from a location in this state and sending text messages or placing telephone calls from a location outside this state to individuals located in this state.

(3)(a) The division shall create and maintain forms for the notice required by subsection (1), which, at a minimum, must elicit all of the following information:

1. The name, address, and telephone number of the registered agent.
2. The name, address, and telephone number of the person or organization conducting business in this state as specified in subsection (1).

(b) The person or organization conducting business in this state as specified in subsection (1) must immediately notify the division of any changes in the information required in paragraph (a).

(4) Any person or organization that violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 7. This act shall take effect October 1, 2021.

Approved by the Governor June 4, 2021.

Filed in Office Secretary of State June 4, 2021.