

SB 284 and new communication “paid for by” identifier laws

Alaska Public Offices Commission
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Part One: Introduction

- ▶ Senate Bill 284 (“SB 284”) was signed into law on June 1, 2010 as Chapter 36, SLA 2010, and took effect on June 2, 2010.
- ▶ Among other things, the bill amended the laws requiring “paid for by” identifiers on communications that identify candidates and issues.
- ▶ The changes to “paid for by” identifiers primarily affect corporations, labor unions, and groups who make the communications, not candidates or individuals.
- ▶ The focus of this training is NOT on the requirements for candidates or individuals who make communications. Instead, it will focus on the requirements for other types of persons.
- ▶ Additional information, including FAQs and hypothetical examples are available on the APOC website at:
 - ▶ <http://doa.alaska.gov/apoc/FAQs/faqcvr.html>

Part Two: Helpful Definitions/Vocabulary

- ▶ **“Communication”**: an announcement or advertisement disseminated through print or broadcast media, including radio, television, cable, and satellite, the Internet, or through a mass mailing, excluding those placed by an individual or nongroup entity and costing \$500 or less and those that do not directly or indirectly identify a candidate or proposition, as that term is defined in AS 15.13.065(c). AS 15.13.400(3).
- ▶ **“Person”**: includes a natural person (aka “individual”), corporations, companies, partnerships, firms, associations, organizations, business trusts, societies, labor unions, nongroup entities, and groups. AS 01.10.60(8), AS 15.13.400 (14).

Part Three:

General Rule About “Paid For By” Identifiers

- ▶ **For candidates and individuals**: All communications must be clearly identified by the words “paid for by” followed by the name and address or principal place of business of the person paying for the communication. AS 15.13.090(a).
- ▶ **For persons other than an individual or candidate** (e.g., groups, labor unions, corporations): as a **general rule** include the “paid for by” information described above **AND** the following information on all communications:
 - ▶ Name and title of the person’s principal officer
 - ▶ Statement from the principal officer approving the communication
 - ▶ Name and city and state of residence or principal place of business of the person’s **three largest contributors** during the 12-month period before the date of the communication.
 - ▶ *Note: This statement is not required if the person has no contributors*
 - ▶ These requirements are found in AS 15.13.090(a)(2)(A)-(C).
- ▶ **The specific requirements differ slightly depending on the medium of the communication. We will go through these differences.**

Part Four: Print/Video Communications

- ▶ The following statements must be placed in the print or video communication and must be easily discernable:
 - ▶ “This communication was paid for by (person’s name and city and state of principal place of business).”
 - ▶ The name and title of the person’s principal officer.
 - ▶ A statement from the principal officer approving the message.
 - ▶ “The top contributors of (person’s name) are (list the name and city and state of residence or principal place of business of the person’s three largest contributors).”
 - ▶ NOTE: *This statement is not required if the person paying for the communication has no contributors.*

AS 15.13.090(a)(1),(2); 15.13.090(c)

Part Four (con't)

- ▶ Example:

- ▶ “This communication was paid for by Alaskans for Dogs of Anchorage, Alaska. I am Sandy Jones, Chair of Alaskans for Dogs, and I approve this message. The top contributors of Alaskans for Dogs are Petco, Inc., of Wilmington, Delaware, Nancy Smith, of Anchorage, Alaska, and Robert Johnson, of Fairbanks, Alaska.”

Part Four (con't): Additional Requirements for Audio-Visual Communications

- ▶ A video communication that contains an audio component must also include the following statements read in a manner that is easily heard:
 - ▶ “This communication was paid for by (person’s name).”
 - ▶ “The top contributors of (person’s name) are (the name of the three largest contributors to the person under AS 15.13.090(a)(2)(c)).”
 - ▶ *NOTE: This statement is not required if the person paying for the communication has no contributors.*

AS 15.13.090(d)

Quick Recap of Print/Video Requirements

- ▶ **Print/Video Only (no audio)**
 - ▶ The following must be visible:
 - ▶ Paid for by (name and address) +
 - ▶ Name of principal officer +
 - ▶ Principal officer statement of approval +
 - ▶ Top contributors (names + city/state)

- ▶ **Video With Audio Component (typically commercials)**
 - ▶ All of the above +
 - ▶ The following must be read:
 - ▶ Paid for by (name only) +
 - ▶ Top contributors (names only)

Part Five: Radio and Audio Communications

- ▶ For radio or audio communications, or any communication that includes an audio component, the following statements must be read in a manner that is easily heard and understood:
 - ▶ “This communication was paid for by (person’s name).”
 - ▶ “The top contributors of (person’s name) are (the name of the largest contributors to the person under AS 15.13.090(a)(2)(c)).” *This statement is not required if the person paying for the communication has no contributors.*

AS 15.13.090(d)

Quick Recap: Audio Communications

- ▶ The following must be read:
 - ▶ Paid for by (name only) +
 - ▶ Top contributors (names only)

- ▶ Example:
 - ▶ “This communication was paid for by Alaskans for Alaska. The top contributors of Alaskans for Alaska are Joan Wrangell, David Cook, and Nancy McKinley.”

Part Six: What do clearly identified and easily discernible mean?

- ▶ 2 AAC 50.306(a)(1): For print communications, the information must be:
 - ▶ visible,
 - ▶ separate from the text of the communication, and
 - ▶ large enough to be read by a viewer
- ▶ 2 AAC 50.306(a)(2): For audio, audio-visual, automated telephone, or electronic communications, the information must be:
 - ▶ visual and of sufficient size and duration to be read by the viewer, or
 - ▶ spoken and audible at the same volume as the communication, or
 - ▶ Both visual and spoken as described above.

Part Seven: Independent Expenditures

- ▶ “Independent Expenditure”: an expenditure that is made without the direct or indirect consultation or cooperation with, or at the suggestion or the request of, or with the prior consent of, a candidate, a candidate’s campaign treasurer or deputy treasurer, or another person acting as a principal or agent of the candidate. AS 15.13.400(10).
- ▶ Independent expenditures can be made for/against candidates or for/against ballot measures. AS 15.13.135; 15.13.140.
- ▶ **EXTRA “Paid for By” requirement for independent expenditures about candidates:** A person who makes independent expenditures for a communication that supports or opposes a candidate for election to public office **must comply with all other “paid for by” identifiers and include the following statement:**
 - ▶ This NOTICE TO VOTERS is required by Alaska law.
 - ▶ (I/We) certify that this (mailing/literature/advertisement) is not authorized, paid for, or approved by the candidate.
 - ▶ AS 15.13.135.
- ▶ **This statement is not required for independent expenditure communications for or against ballot propositions. It is only required for independent expenditures in candidate elections.**

Part Eight: Exceptions and General Information

- ▶ AS 15.13.090(b): The paid for by identifiers required by AS 15.13.090(a) do not apply when the communication is made by
 - ▶ an individual acting independently of any other person; and
 - ▶ is made to influence the outcome of a ballot proposition; and
 - ▶ is made for a billboard, sign, or other printed material other than an advertisement in a newspaper or other periodical.

- ▶ You may use standard English abbreviations in an identifier (AK for Alaska, Rd. for Road, etc.). 2 AAC 50.306

Part Eight (con't)

- ▶ Objects that are smaller than 3.5 inches x 5 inches (most campaign buttons and business cards) do not require an identifier (unless they are media ads of any kind; regardless of their size or nature, *all* media ads must have a identifier). 2 AAC 50.306(e)(1).
- ▶ Envelopes (with the exception of “contribulopes”) are not required to have the identifier (the contents of the envelopes must have the identifier but it is not required on the envelope). 2 AAC 50.306(d)
- ▶ Envelopes used to solicit contributions (“contribulopes”) are required to include the “paid for by” identifier. 2 AAC 50.306(d)

Part Eight (con't)

- ▶ Thank You notes require the identifier (unless they are smaller than 3.5 inches x 5.0 inches). 2 AAC 50.306(d)
- ▶ T-shirts do not require the identifier
- ▶ Campaign yard signs require the identifier

Part Eight (con't)

- ▶ Bumper stickers require the identifier
- ▶ In the case of shared campaign advertising, the identifier need include only the *name* of each participant sharing the cost. The addresses do not need to be included.
- ▶ Websites and e-mails must include an identifier. Even though the cost of an e-mail may be negligible, a paid for by identifier must be included because the communication is meant to influence the election. See AO 10-09-CD for more information regarding identifiers and Facebook and Twitter.

Part Nine: Top Three Contributors

- ▶ The top three contributors are the three persons who have made the largest total contributions to the person paying for the communication during the 12-month period before the date of the communication. AS 15.13.090(e)
- ▶ The top three contributors should be listed with the highest contributor(s) first. AS 15.13.090(e)
- ▶ If there is a tie amongst the largest contributors to a person paying for a communication, you may select any three of the contributors of equal amounts to identify. You do not have to identify more than three contributors. AS 15.13.090(e)

Part Ten: Hypothetical Scenarios

- ▶ Please note: These hypothetical examples may not identify all possible scenarios in which “paid for by” identifiers are required.
- ▶ The examples included in this presentation are meant for educational/informational purposes only and are not intended to represent any actual person or event.
- ▶ These hypothetical examples are available on the APOC website at:
 - ▶ <http://doa.alaska.gov/apoc/pdf/SB284PaidForByExamples.pdf>

Scenario 1: business/corporation TV ad for ballot initiative, no contributors

- ▶ Oil Company A makes an independent expenditure for a television commercial in support of a ballot initiative from its political activities account that comes from its general treasury. The company's disclaimer for this is:
 - ▶ “This communication was paid for by Oil Company A of Anchorage, Alaska. I am John Doe, President of Oil Company A and I approve this message.”
- ▶ *There is no need in this instance to identify the top contributors because the expenditure comes from the general treasury and is not a result of a specific solicitation or contribution for the ballot initiative.*
- ▶ **Note:** If the television advertisement contains an audio component, the statement “This communication was paid for by Oil Company A” must be read aloud.

Scenario 2: business/corporation newspaper ad for ballot initiative, no contributors

- ▶ Oil Company A makes an independent expenditure for a newspaper advertisement in support of a ballot initiative from its political activities account that comes from its general treasury. The company's written disclaimer for this is:
 - ▶ “This communication was paid for by Oil Company A of Anchorage, Alaska. I am John Doe, President of Oil Company A and I approve this message.”
- ▶ *There is no need in this instance to identify the top contributors because the expenditure comes from the general treasury and is not a result of a specific solicitation or contribution for the ballot initiative.*

Scenario 3: print ads for ballot initiative made by an entity with contributors

- ▶ Alumni Association A makes independent expenditures for newspaper and magazine advertisements in support of a ballot initiative from its political activities account with funds it has solicited via a mass mailing to its members asking for contributions to support the initiative.
- ▶ Funds for the expenditures are also generated from a place on the Association's web site asking for contributions to support the initiative. The Association's disclaimer for any expenditure paid for by these contributions is:
 - ▶ "This communication was paid for by Alumni Association A of Fairbanks, Alaska. I am Mary Smith, President of Alumni Association A and I approve this message. The top contributors of Alumni Association A are Shirley Smith of Fairbanks, Alaska, Carey Doe of Juneau, Alaska, and Daniel Makey, of Houston, Texas."

Scenario 4: television ads for candidate by entity without contributors

- ▶ Alumni Association B makes independent expenditures for a television advertisement in support of a candidate from its political activities account that comes from its general treasury, which is comprised of general contributions from its membership. The Association's disclaimer for this is:
 - ▶ “This communication was paid for by Alumni Association B of Juneau, Alaska. I am Mary Smith, President of Alumni Association B and I approve this message. This notice to voters is required by Alaska law. We certify that this advertisement is not authorized, paid for, or approved by the candidate.”
- ▶ *There is no need in this instance to identify the top contributors because the expenditure comes from the general treasury and is not a result of a specific solicitation or contribution for the ballot initiative.*
- ▶ **Note:** If the television advertisement contains an audio component, the statement “This communication was paid for by Alumni Association B and was not authorized by the candidate” must be read aloud.

Scenario 5: radio ad for candidate by corporation with contributors

- ▶ Cruise Ship Company Z makes independent expenditures for a radio advertisement supporting a candidate in an election from its political activities account with funds it has solicited via a request for contributions seeking to support the candidate in a speech made at an industry meeting.
- ▶ The company also receives contributions for this independent expenditure from a number of donors who make it clear both on their checks and in an accompanying letter that the money is being donated for use in ads supporting the candidate. The Cruise ship's disclaimer for any expenditure paid for by these contributions is:
 - ▶ “This communication was paid for by Cruise Ship Company Z. The top contributors of Cruise Ship Company Z are Shirley Smith, Carey Doe, and Daniel Makey. This notice to voters is required by Alaska law. We certify that this advertisement is not authorized, paid for, or approved by the candidate.”

Scenario 6: online ad for ballot initiative by group with contributors

- ▶ Alaskans for Cats makes independent expenditures for an online print advertisement opposing a ballot initiative from its political activities account which is comprised of funds it has solicited via a request for contributions seeking to oppose the initiative. The group's disclaimer for these independent campaign expenditures is:
 - ▶ “This communication was paid for by Alaskans for Cats, based in Ketchikan, Alaska. I am Henry Hull, chairman of Alaskans for Cats and I approve this message. The top contributors of Alaskans for Cats are: People for the Ethical Treatment of Animals, based in Anchorage, Alaska, Petco, Inc., based in Fairbanks, Alaska, and Henry Hull of Ketchikan, Alaska.”

Part Eleven: Penalties and Remedies

- ▶ A candidate, group, or individual may be assessed a **penalty of up to \$50** per day for failure to include a correct “paid for by” on a political ad. AS 15.13.390(a).
- ▶ A person commits the crime of campaign misconduct in the second degree if the person knowingly prints or publishes a communication intended to influence the outcome of an election of a candidate or outcome of a ballot proposition without a proper “paid for by” identifier. AS 15.56.014(a)(2).
- ▶ If you are uncertain if a communication requires the identifier, please contact APOC staff to be sure that you comply with the reporting requirements.
- ▶ If you realize that you have inadvertently left an identifier off of a communication, contact APOC staff immediately and report the error. There are steps that you must take as soon as possible after discovering the error to minimize the repercussions to your campaign.

Part Twelve: Advisory Opinions

- ▶ APOC staff can answer most questions, but our advice is limited to applying existing interpretations of statutes, regulations, and APOC orders.
- ▶ If you have a question about the application or interpretation of a statute or regulation and there is no clear answer in the Alaska Statutes, Alaska Administrative Code, or previous APOC decisions, you may request a formal advisory opinion from the commission under AS 15.13.374.
- ▶ Advisory opinion requests must be in writing and must involve activity the requesting person is presently engaged in or intends to undertake in the future. Advisory opinion requests may not involve hypothetical situations or actions of a third party. Advisory opinion requests and the resulting opinions are public record.

Part Thirteen: Reminders

- ▶ Check to make sure you have put the proper statements on ad copy before you send it to a third party for printing or production. Newspaper, radio, and TV personnel may not remind you if you forget.

- ▶ Contact APOC if you have questions:
 - ▶ 907-276-4176 (Anchorage)
 - ▶ 907-465-4864 (Juneau)
 - ▶ 1-800-478-4176 (toll free)
 - ▶ apoc@alaska.gov