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HOUSE BILL 182

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

INTRODUCED BY

Gail Chasey and Charlotte Little and Katy M. Duhigg

AN ACT

RELATING TO ELECTIONS; AMENDING AND ENACTING SECTIONS OF THE
CAMPAIGN REPORTING ACT BY ADDING DISCLAIMER REQUIREMENTS FOR
ADVERTISEMENTS GENERATED BY USING ARTIFICIAL INTELLIGENCE;
PROVIDING DISCLAIMER REQUIREMENTS RELATED TO THE USE OF
MATERIALLY DECEPTIVE MEDIA; CREATING THE CRIME OF DISTRIBUTING
OR ENTERING INTO AN AGREEMENT WITH ANOTHER PERSON TO DISTRIBUTE
MATERIALLY DECEPTIVE MEDIA; ADDING DEFINITIONS; PROVIDING
PENALTIES; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 1-19-26 NMSA 1978 (being Laws 1979,
Chapter 360, Section 2, as amended) is amended to read:

"1-19-26. DEFINITIONS.--As used in the Campaign Reporting
Act:

A. "advertisement" means a communication referring

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1 to a candidate or ballot question that is published,
2 disseminated, distributed or displayed to the public by print,
3 broadcast, satellite, cable or electronic media, including
4 recorded phone messages, or by printed materials, including
5 mailers, handbills, signs and billboards, but "advertisement"
6 does not include:

7 (1) a communication by a membership
8 organization or corporation to its current members,
9 stockholders or executive or administrative personnel;

10 (2) a communication appearing in a news story
11 or editorial distributed through a print, broadcast, satellite,
12 cable or electronic medium;

13 (3) a candidate debate or forum or a
14 communication announcing a candidate debate or forum paid for
15 on behalf of the debate or forum sponsor; provided that two or
16 more candidates for the same position have been invited to
17 participate or, in the case of an uncontested election, that
18 the single candidate for the position has been invited to
19 participate;

20 (4) nonpartisan voter guides allowed by the
21 federal Internal Revenue Code of 1986, as amended, for Section
22 501(c)(3) organizations; or

23 (5) statements made to a court or
24 administrative board in the course of a formal judicial or
25 administrative proceeding;

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1 B. "anonymous contribution" means a contribution
2 the contributor of which is unknown to the candidate or the
3 candidate's agent or the political committee or its agent who
4 accepts the contribution;

5 C. "artificial intelligence" means a machine-based
6 system that can emulate the structure and characteristics of
7 input data in order to generate synthetic content, including
8 images, video or audio;

9 ~~[G.]~~ D. "ballot question" means a constitutional
10 amendment or other question submitted to the voters in an
11 election;

12 ~~[D.]~~ E. "bank account" means an account in a
13 financial institution regulated by the United States or a state
14 of the United States;

15 ~~[E.]~~ F. "campaign committee" means an association
16 of two or more persons authorized by a candidate to act on the
17 candidate's behalf for the purpose of electing the candidate to
18 office; provided that a candidate shall not authorize more than
19 one campaign committee;

20 ~~[F.]~~ G. "campaign expenditure" means an expenditure
21 that is made by a campaign committee or by a candidate in
22 support of the candidate's campaign in an election;

23 ~~[G.]~~ H. "candidate" means an individual who seeks
24 or considers an office in an election covered by the Campaign
25 Reporting Act, including a public official, who has filed a

.227033.2

1 declaration of candidacy and has not subsequently filed a
2 statement of withdrawal or:

3 (1) for a nonstatewide office, has received
4 contributions or made expenditures of more than one thousand
5 dollars (\$1,000) or authorized another person or campaign
6 committee to receive contributions or make expenditures of more
7 than one thousand dollars (\$1,000) for the purpose of seeking
8 election to the office; or

9 (2) for a statewide office, has received
10 contributions or made expenditures of more than three thousand
11 dollars (\$3,000) or authorized another person or campaign
12 committee to receive contributions or make expenditures of more
13 than three thousand dollars (\$3,000) for the purpose of seeking
14 election to the office or for candidacy exploration purposes in
15 the years prior to the year of the election;

16 [~~H.~~] I. "contribution":

17 (1) means a gift, subscription, loan, advance
18 or deposit of money or other thing of value, including the
19 estimated value of an in-kind contribution, that is made or
20 received for a political purpose, including payment of a debt
21 incurred in an election campaign;

22 (2) includes a coordinated expenditure;

23 (3) does not include the value of services
24 provided without compensation or unreimbursed travel or other
25 personal expenses of individuals who volunteer a portion or all

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1 of their time on behalf of a candidate or political committee
2 nor does it include the administrative or solicitation expenses
3 of a political committee that are paid by an organization that
4 sponsors the committee; and

5 (4) does not include the value of the
6 incidental use of the candidate's personal property, home or
7 business office for campaign purposes;

8 [~~F.~~] J. "coordinated expenditure" means an
9 expenditure that is made:

10 (1) by a person other than a candidate or
11 campaign committee;

12 (2) at the request or suggestion of, or in
13 cooperation, consultation or concert with, a candidate,
14 campaign committee or political party or any agent or
15 representative of a candidate, campaign committee or
16 political party; and

17 (3) for the purpose of:

18 (a) supporting or opposing the
19 nomination or election of a candidate; or

20 (b) paying for an advertisement that
21 refers to a clearly identified candidate and is published and
22 disseminated to the relevant electorate in New Mexico within
23 thirty days before the primary election or sixty days before
24 the general election in which the candidate is on the ballot;

25 [~~J.~~] K. "deliver" or "delivery" means to deliver by

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1 certified or registered mail, telecopier, electronic
2 transmission or facsimile or by personal service;

3 L. "depicted individual" means an individual whose
4 image, photo, likeness or voice is represented in an
5 advertisement or other media in such a manner that results in
6 the individual being clearly identifiable by an average viewer
7 or listener of the advertisement or media;

8 M. "distribution platform" means a website or a
9 regularly published newspaper, magazine or other periodical of
10 general circulation, including an internet or electronic
11 publication, that routinely carries news and commentary of
12 general interest and that publishes advertisements;

13 ~~[K.]~~ N. "election" means any primary, general or
14 statewide special election in New Mexico and includes county
15 and judicial retention elections but excludes federal,
16 municipal, school board and special district elections;

17 ~~[L.]~~ O. "election year" means an even-numbered year
18 in which an election covered by the Campaign Reporting Act is
19 held;

20 ~~[M.]~~ P. "expenditure" means a payment, transfer or
21 distribution or obligation or promise to pay, transfer or
22 distribute any money or other thing of value for a political
23 purpose, including payment of a debt incurred in an election
24 campaign or pre-primary convention;

25 ~~[N.]~~ Q. "independent expenditure" means an

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1 expenditure that is:

2 (1) made by a person other than a candidate or
3 campaign committee;

4 (2) not a coordinated expenditure as defined
5 in the Campaign Reporting Act; and

6 (3) made to pay for an advertisement that:

7 (a) expressly advocates the election or
8 defeat of a clearly identified candidate or the passage or
9 defeat of a clearly identified ballot question;

10 (b) is susceptible to no other
11 reasonable interpretation than as an appeal to vote for or
12 against a clearly identified candidate or ballot question; or

13 (c) refers to a clearly identified
14 candidate or ballot question and is published and disseminated
15 to the relevant electorate in New Mexico within thirty days
16 before the primary election or sixty days before the general
17 election at which the candidate or ballot question is on the
18 ballot;

19 [Ø.] R. "legislative caucus committee" means a
20 political committee established by the members of a political
21 party in a chamber of the legislature;

22 S. "materially deceptive media" means an image,
23 video or audio that:

24 (1) depicts an individual engaged in conduct
25 or speech in which the depicted individual did not engage;

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1 (2) upon viewing or listening to, a reasonable
2 viewer or listener would incorrectly believe that the depicted
3 individual engaged in the conduct or speech depicted in the
4 media; and

5 (3) was produced in whole or in part by using
6 artificial intelligence;

7 [~~P.~~] T. "person" means an individual or entity;

8 [~~Q.~~] U. "political committee" means:

- 9 (1) a political party;
- 10 (2) a legislative caucus committee;
- 11 (3) an association that consists of two or
12 more persons whose primary purpose is to make contributions to
13 candidates, campaign committees or political committees or make
14 coordinated expenditures or any combination thereof; or

- 15 (4) an association that consists of two or
16 more persons whose primary purpose is to make independent
17 expenditures and that has received more than five thousand
18 dollars (\$5,000) in contributions or made independent
19 expenditures of more than five thousand dollars (\$5,000) in the
20 election cycle;

21 [~~R.~~] V. "political party" means an association that
22 has qualified as a political party pursuant to the provisions
23 of Section 1-7-2 NMSA 1978;

24 [~~S.~~] W. "political purpose" means for the purpose
25 of supporting or opposing a ballot question or the nomination

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1 or election of a candidate;

2 [F.] X. "prescribed form" means a form or
3 electronic format prepared and prescribed by the secretary of
4 state;

5 [U.] Y. "public official" means a person elected to
6 an office in an election covered by the Campaign Reporting Act
7 or a person appointed to an office that is subject to an
8 election covered by that act; and

9 [V.] Z. "reporting individual" means a public
10 official, candidate or treasurer of a campaign committee or a
11 treasurer of a political committee."

12 SECTION 2. Section 1-19-26.4 NMSA 1978 (being Laws 2019,
13 Chapter 262, Section 2) is amended to read:

14 "1-19-26.4. DISCLAIMERS IN ADVERTISEMENTS--USE OF
15 ARTIFICIAL INTELLIGENCE--VIOLATION--PENALTY.--

16 A. A person who makes a campaign expenditure, a
17 coordinated expenditure or an independent expenditure for an
18 advertisement in an amount that exceeds one thousand dollars
19 (\$1,000), or in an amount that, when added to the aggregate
20 amount of the campaign expenditures, coordinated expenditures
21 and independent expenditures for advertisements made by the
22 same person during the election cycle, exceeds one thousand
23 dollars (\$1,000), shall ensure that the advertisement contains
24 the name of the candidate, committee or other person who
25 authorized and paid for the advertisement.

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1 B. The requirements of Subsection A of this section
2 do not apply to the following:

3 (1) bumper stickers, pins, buttons, pens and
4 similar small items upon which the disclaimer cannot be
5 conveniently printed; or

6 (2) skywriting, water towers, wearing apparel
7 or other means of displaying an advertisement of such a nature
8 that the inclusion of a disclaimer would be impracticable.

9 C. The disclaimer statements required by Subsection
10 A of this section shall be set forth legibly on any
11 advertisement that is disseminated or displayed by visual
12 media. If the advertisement is transmitted by audio media, the
13 statement shall be clearly spoken during the advertisement. If
14 the advertisement is transmitted by audiovisual media, the
15 statement shall be both written legibly and spoken clearly
16 during the advertisement.

17 D. If a person creates, produces or purchases an
18 advertisement generated in whole or in part by using artificial
19 intelligence, the advertisement shall include a disclaimer.
20 The disclaimer shall appear in a clear and conspicuous manner
21 and shall indicate that the advertisement was generated in
22 whole or in part by the use of artificial intelligence, and if
23 the advertisement is:

24 (1) in written form, the disclaimer shall be a
25 clearly written statement using the same size text and in the

1 same language as the other text in the advertisement;

2 (2) in the form of a graphic, the disclaimer
3 shall be a statement that appears in the graphic in text in the
4 same language and at least as large as the majority of any
5 other text used in the graphic;

6 (3) an audio communication, the disclaimer
7 shall be a spoken audio statement lasting at least four
8 seconds, placed at the beginning or the end of the audio
9 communication and spoken in a clear, audible and intelligible
10 manner in the same language as the language used in the audio
11 communication;

12 (4) a video that also includes audio, the
13 disclaimer shall be a spoken audio statement lasting at least
14 four seconds, placed at the beginning or the end of the video
15 and spoken in a clear, audible and intelligible manner in the
16 same language as the language spoken in the video; and

17 (5) a video that does not include audio, the
18 disclaimer shall be provided in the video as a statement using
19 letters at least as large as the majority of any text included
20 with the video and in the same language as the text, or, if
21 there is no text communication included with the video, in a
22 size that is easily readable by the average viewer.

23 E. Each occurrence of a person creating, producing
24 or purchasing an advertisement generated in whole or in part by
25 using artificial intelligence that fails to meet the applicable

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1 disclaimer requirements provided in Subsection D of this
2 section constitutes a separate violation. A person found to
3 have violated the requirements provided in Subsection D of this
4 section shall be subject to civil penalties as provided in
5 Section 1-19-34.6 NMSA 1978.

6 F. The disclaimers required by Subsection D of this
7 section do not apply to:

8 (1) a radio or television broadcasting
9 station, including a cable or satellite television operator,
10 programmer or producer, that broadcasts an advertisement as
11 part of a bona fide newscast, news interview, news documentary
12 or on-the-spot coverage of a bona fide news event if the
13 broadcast clearly acknowledges through content or a disclaimer,
14 in a manner that can be easily read or heard by an average
15 viewer or listener, that the advertisement was generated in
16 whole or in part by using artificial intelligence and does not
17 accurately represent the speech or conduct of the depicted
18 individual;

19 (2) a radio or television broadcasting
20 station, including a cable or satellite television operator,
21 programmer or producer, that broadcasts an advertisement when
22 the station is paid to broadcast the advertisement;

23 (3) an advertisement that reasonably
24 constitutes satire or parody; and

25 (4) an advertisement that is published, posted

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1 or otherwise distributed by or on a distribution platform, if
2 the distribution platform has a clearly stated written policy
3 that it provides to each person or entity that creates, seeks
4 to publish or seeks to originally distribute an advertisement
5 that the advertisement shall include a disclaimer consistent
6 with the requirements provided in Subsection D of this section.

7 G. A distribution platform is not liable for lack
8 of a disclaimer as required in Subsection D of this section
9 regarding an advertisement or prerecorded telephone message if
10 the distribution platform can show that it provided to the
11 person who created, produced or purchased the advertisement the
12 distribution platform's disclaimer requirements for content in
13 an advertisement or prerecorded telephone message created in
14 whole or in part by using artificial intelligence."

15 SECTION 3. A new section of the Campaign Reporting Act,
16 Section 1-19-26.8 NMSA 1978, is enacted to read:

17 "1-19-26.8. [NEW MATERIAL] PROHIBITED USE OF MATERIALLY
18 DECEPTIVE MEDIA--DISCLAIMERS REQUIRED--CRIME FOR VIOLATION--
19 EXCEPTIONS--ENFORCEMENT.--

20 A. Except as otherwise provided in Subsections B
21 through E of this section, it is a violation of the Campaign
22 Reporting Act for a person to distribute or enter into an
23 agreement with another person to distribute materially
24 deceptive media. A person violates this subsection if that
25 person distributes or enters into an agreement with another

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1 person to distribute materially deceptive media and:

2 (1) the person knows the materially deceptive
3 media falsely represents a depicted individual;

4 (2) the distribution occurs within ninety
5 days before an election; and

6 (3) the person intends the distribution to
7 result in altering the voting behavior of electors in an
8 election by misleading the electors into believing that the
9 depicted individual engaged in the speech or conduct depicted,
10 and the distribution is reasonably likely to cause that result.

11 B. The prohibition provided in Subsection A of this
12 section does not apply to materially deceptive media if that
13 media is a video that includes a disclaimer that:

14 (1) appears throughout the entirety of the
15 video;

16 (2) informs the viewer that the media has
17 been manipulated using artificial intelligence and depicts
18 speech or conduct that did not occur;

19 (3) is clearly visible to and readable by an
20 average viewer;

21 (4) is in text at least as large as the
22 majority of any text communication in the video or, if there is
23 no text communication, in a size that is easily readable by an
24 average viewer; and

25 (5) is in the same language as the language

1 used in the video media.

2 C. The prohibition provided in Subsection A of this
3 section does not apply to materially deceptive media that is
4 audio and does not also contain image or video media if, at the
5 beginning and the end of the audio, a disclaimer is read in a
6 clearly spoken manner that can be heard by an average listener
7 and is spoken in the same language used in the audio.

8 D. The prohibition provided in Subsection A of this
9 section does not apply to materially deceptive media that is a
10 still image if that image provides a disclaimer that is clearly
11 visible to and readable by an average viewer and, if the still
12 image contains other text, the text in the disclaimer is in
13 letters at least as large as the majority of the text and is in
14 the same language as the language used in the other text.

15 E. The prohibition provided in Subsection A of this
16 section does not apply to materially deceptive media that was
17 generated by editing an existing image, audio or video if the
18 materially deceptive media includes a disclaimer in the form of
19 a citation directing the viewer or listener to the original
20 existing image, audio or video from which the generated media
21 was obtained.

22 F. A person found to have willfully and knowingly
23 violated the prohibition provided in Subsection A of this
24 section is guilty of a crime as follows:

25 (1) for a first violation, a misdemeanor

1 punishable by imprisonment for not more than ninety days or a
2 fine of not more than five hundred dollars (\$500), or both; or

3 (2) for a violation that occurs within five
4 years of a previous conviction for a violation under this
5 section, a felony punishable by imprisonment for not more than
6 five years or a fine of not more than one thousand dollars
7 (\$1,000), or both.

8 G. Enforcement of the provisions of this section,
9 including injunctive relief, against a person who violates this
10 section may be sought in any court of competent jurisdiction by
11 any of the following:

12 (1) the attorney general;

13 (2) a district attorney;

14 (3) a depicted individual who is falsely
15 represented;

16 (4) a candidate for office who has been
17 injured or is likely to be injured by the distribution of
18 materially deceptive media; or

19 (5) any organization that represents the
20 interests of voters who are likely to be misled by the
21 distribution of materially deceptive media."

22 SECTION 4. EMERGENCY.--It is necessary for the public
23 peace, health and safety that this act take effect immediately.