Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 850

INTRODUCER: Ethics and Elections Committee and Senator DiCeglie

SUBJECT: Use of Artificial Intelligence in Political Advertising

DATE: February 7, 2024   REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE		ACTION
1.	Biehl	Roberts	EE		**Fav/CS**
2.	Biehl	Twogood	RC		**Pre-meeting**

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I.   Summary:

CS/SB 850 creates a definition for "generative artificial intelligence" and requires a disclaimer be included on specified forms of political advertisements created with generative artificial intelligence (AI).

The bill makes failure to include the required disclaimer a first-degree misdemeanor and prescribes an expedited process for resolution of a complaint to the Florida Elections Commission of a violation of the disclaimer requirement.

The bill takes effect July 1, 2024.

II.   Present Situation:

Disclaimer Requirements for Political Advertising

Current law defines "political advertisement" to mean a paid expression in a communications medium,[1] whether radio, television, newspaper, magazine, periodical, campaign literature, direct mail, or display or by means other than the spoken word in direct conversation, which expressly advocates the election or defeat of a candidate or the approval or rejection of an issue.[2] However, the term does not include:

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[1] Section 106.011(4), F.S., defines "communications medium" to include broadcasting stations, newspapers, magazines, outdoor advertising facilities, printers, direct mail, advertising agencies, the Internet, and telephone companies.
[2] Section 106.011(15), F.S.

- A statement by an organization, in existence before the time during which a candidate qualifies or an issue is placed on the ballot for that election, in support of or in opposition to a candidate or issue, in that organization's newsletter, which newsletter is distributed only to the members of that organization.
- Editorial endorsements by a newspaper, a radio or television station, or any other recognized news medium.[3]

An "electioneering communication" is 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:

- 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;
- 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
- Is targeted to the relevant electorate in the geographic area the candidate would represent if elected.[4]

Specified types of communications are exempted from the definition.[5]

Political advertisements and electioneering communications must disclose who approved and paid for the advertisement or communication.[6] Voter guides also must include the required disclaimers, as applicable, and be marked "Voter Guide."[7] In addition, any advertisement, other than a political advertisement, independent expenditure,[8] or electioneering communication, on billboards, bumper stickers, radio, or television, or in a newspaper, a magazine, or a periodical, intended to influence public policy or the vote of a public official, must clearly designate the sponsor of such advertisement by including a statement of sponsorship.[9]

Florida law does not currently require a disclaimer for the use of artificial intelligence (AI) in any form of political advertising.

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[3] *Id*.
[4] Section 106.011(8)(a), F.S.
[5] *See* s. 106.011(8)(b), F.S.
[6] Sections 106.143 and 106.1439, F.S.
[7] Section 106.1436, F.S. The term "voter guide" means direct mail that is either an electioneering communication or a political advertisement sent for the purpose of advocating for or endorsing particular issues or candidates by recommending specific electoral choices to the voter or by indicating issue or candidate selections on an unofficial ballot (s. 106.1436(1), F.S.).
[8] Section 106.011(12)(a), F.S., defines "independent expenditure" to mean an expenditure by a person for the purpose of expressly advocating the election or defeat of a candidate or the approval or rejection of an issue, which expenditure is not controlled by, coordinated with, or made upon consultation with, any candidate, political committee, or agent of such candidate or committee.
[9] Section 106.1437, F.S.

Election-Related Use of Artificial Intelligence

Effect of AI Use on Elections

Nationally, the proliferation of generative AI[10] use and its outpacing of government regulation has created concern among policymakers about its potentially negative effect on the electoral process. Specific concerns include, but are not limited to, voter misinformation by chatbots,[11] phishing scams on election officials through AI-generated voices, and the use of deepfakes[12] to deceive voters and damage political rivals. Over time, the use of AI may also erode trust in authentic information.[13]

Federal Action

The current presidential administration has taken a number of actions related to use of AI generally, including creating a government website specific to the issue, creating an "AI Bill of Rights," and issuing an executive order directing a range of federal agencies to establish guidelines and best practices for use of AI.[14]

Legislative proposals from members of Congress related to AI and elections include:
- A comprehensive regulatory framework for AI that includes, among other provisions, assorted transparency requirements.[15]
- Bills requiring political advertisements that include content generated by AI to bear a disclaimer stating such.[16]
- A bill prohibiting the distribution of materially deceptive AI-generated audio or visual media relating to candidates for federal office.[17]
- A bill prohibiting certain political communications that contain materially deceptive audio generated by AI which impersonates a candidate's voice.[18]

In addition, the Federal Elections Commission received a petition asking the commission to clarify in rule that AI-generated campaign advertisements are subject to a statutory prohibition against fraudulent misrepresentation of other candidates or political parties.[19] The commission

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[10] Generally speaking, it is the creation of new content that distinguishes generative AI from the artificial intelligence that is used to make predictions or carry out analytical tasks based on inputs and learned behaviors.

[11] IBM defines "chatbot" to mean a computer program that simulates human conversation with an end user (*see What is a Chatbot?*, available at https://www.ibm.com/topics/chatbots (last visited January 12, 2024)).

[12] Although exact definitions of "deepfake" vary, all reflect a depiction of something that has not actually occurred. Merriam-Webster, for example, defines "deepfake" to mean an image or recording that has been convincingly altered and manipulated to misrepresent someone as doing or saying something that was not actually said or done (*see* https://www.merriam-webster.com/dictionary/deepfake, last visited January 12, 2024).

[13] National Conference of State Legislatures, *Challenges Ahead for Lawmakers Seeking to Legislate AI in Campaigns*, available at https://www.ncsl.org/state-legislatures-news/details/challenges-ahead-for-lawmakers-seeking-to-legislate-ai-in-campaigns?utm_source=national+conference+of+state+legislatures&utm_term=0_-61bea1f450-%5blist_email_id%5d&utm_campaign=8fbf8e40e8-canvass-jan-4&utm_medium=email (last visited January 12, 2024).

[14] *See* ai.gov (last visited January 12, 2024).

[15] By Senators Richard Blumenthal and Josh Hawley. A bill has not yet been filed.

[16] S. 1596 (Senator Amy Klobuchar) and H.R. 3044 (Representative Yvette Clarke). Instead of providing a definition for "artificial intelligence" within the bills, the legislation directs the Federal Election Commission to create a definition.

[17] S. 2077 (Senator Amy Klobuchar).

[18] H.R. 4611 (Representative Adriano Espaillat).

[19] The statutory prohibition is found in 52 U.S.C. 30124.

sought public testimony on the petition. Public comment closed on October 16, 2023, and the commission has not yet taken further action.[20]

Other States

The National Conference of State Legislatures reports the following 2023 state legislation related to the use of AI in elections and campaigns:

- In Arizona, a vetoed bill prohibiting use of AI in voting systems.
- In Illinois, a failed bill prohibiting the use of deepfake videos to influence an election 30 days prior to an election.
- In Indiana, a failed bill requiring a disclosure on doctored media used to influence an election.
- In Michigan, enacted bills requiring a disclosure on political ads generated by AI and prohibiting the publication of materially deceptive media 90 days prior to an election where a candidate will appear on the ballot, unless it includes a disclosure that the media has been manipulated.
- In Minnesota, an enacted bill prohibiting the publication of deepfake media to influence an election 90 days prior to an election.
- In New Jersey, failed bills prohibiting the publication of deceptive media for a specified number of days prior to an election where a candidate will appear on the ballot, unless it includes a disclosure that the media has been manipulated, and prohibiting the use of videos that falsely depict an election or policy debate.
- In New York, failed bills prohibiting the use of synthetic media to influence an election and requiring political communications that contain synthetic media to contain a disclaimer.
- In Washington, an enacted bill requiring a disclosure on synthetic media used to influence an election.
- In Wisconsin, a pending bill requiring political communications that contain synthetic media to contain a disclaimer.[21]

In 2019, Texas created a criminal offense for creating or distributing a "deep fake video" created with AI, with the intent to deceive and injure a candidate or influence the result of an election, which depicts a real person performing an action that did not occur in reality.[22]

III. Effect of Proposed Changes:

This bill requires a political advertisement, electioneering communication, or other miscellaneous advertisement of a political nature that 1) contains images, video, audio, text, or

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[20] Federal Elections Commission, *Comments sought on amending regulation to include deliberately deceptive Artificial Intelligence in campaign ads*, https://www.fec.gov/updates/comments-sought-on-amending-regulation-to-include-deliberately-deceptive-artificial-intelligence-in-campaign-ads/ (last visited January 12, 2024). *Also see* Pillsbury Law, *Artificial Intelligence-Generated Content in Political Ads Raises New Concerns for Broadcasters*, available at https://www.pillsburylaw.com/en/news-and-insights/ai-generated-content-broadcasters.html (last visited January 12, 2024).
[21] National Conference of State Legislatures, *Artificial Intelligence (AI) in Elections and Campaigns*, available at https://www.ncsl.org/elections-and-campaigns/artificial-intelligence-ai-in-elections-and-campaigns (last visited January 12, 2024).
[22] *Deepfakes in Texas: What are they and are they illegal?*, available at https://versustexas.com/deepfakes/ (last visited January 12, 2024). *See also* LegiScan, *TX SB751, 2019-2020*, https://legiscan.com/TX/bill/SB751/2019 (last visited January 12, 2024).

other digital content created in whole or in part with the use of generative AI, 2) appears to depict a real person performing an action that did not actually occur, and 3) was created with intent to injure a candidate or to deceive regarding a ballot issue, to prominently state the following disclaimer: "Created in whole or in part with the use of generative artificial intelligence (AI)."

The bill defines "generative AI" to mean a machine-based system that can, for a given set of human-defined objectives, emulate the structure and characteristics of input data in order to generate derived synthetic content, including images, video, audio, text, and other digital content.

The bill provides an expedited process for resolution of a complaint to the Florida Elections Commission of a violation of this disclaimer requirement.[23]

The bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The First Amendment of the U.S. Constitution promotes the free exchange of ideas and information by prohibiting the government from restricting speech because of the message expressed.[24] Content-based restrictions are presumptively invalid.[25] Among specific rights, the First Amendment protects the right to associate for expressive or political activity. The government may infringe upon this right only if it has a compelling interest unrelated to the suppression of speech and if the interest cannot be achieved through significantly less restrictive means.[26]

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[23] Section 106.265, F.S., provides that the Florida Elections Commission or the Division of Administrative Hearings may, upon the finding of a violation of ch. 104 or ch. 106, F.S., impose specified civil penalties.
[24] *See, e.g., Texas v. Johnson* (491 U.S. 397 (1989); *State v. T.B.D.*, 656 So.2d 479 (Fla. 1995).
[25] *See, e.g., Police Dept. of Chicago v. Mosley*, 408 U.S. 92 (1972).
[26] *City of Dallas v. Stanglin*, 490 U.S. 19 (1989).

This bill does not prohibit or restrict the content of political speech generated by AI. Instead, it requires certain political advertisements created using AI to bear a disclaimer.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following section of the Florida Statutes: 106.145.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Ethics and Elections on January 16, 2024:
The committee substitute:
- Adds to the criteria a political advertisement must meet in order for the disclaimer to apply a requirement that the generated content be created with intent to injure a candidate or to deceive regarding a ballot issue;
- Removes specific reference to the civil penalties prescribed in law for violations of the Election Code; and
- Makes failure to include the disclaimer required by the bill a first-degree misdemeanor.

B. Amendments:

None.