

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 850

INTRODUCER: Rules Committee; Ethics and Elections Committee; and Senator DiCeglie

SUBJECT: Use of Artificial Intelligence in Political Advertising

DATE: February 9, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Biehl</u>	<u>Roberts</u>	<u>EE</u>	Fav/CS
2.	<u>Biehl</u>	<u>Twogood</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/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 specifies that in addition to any existing civil penalties provided by law, a person who pays for, sponsors, or approves a form of political advertisement which is required to include the AI disclaimer but fails to include it commits a first-degree misdemeanor. In addition, the bill prescribes an expedited process for resolution of a civil complaint to the Florida Elections Commission of a violation of the AI 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

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.

advocates the election or defeat of a candidate or the approval or rejection of an issue.² However, the term does not include:

- 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, electioneering communications, and certain text message and telephone solicitations 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

² Section 106.011(15), F.S.

³ *Id.*

⁴ Section 106.011(8)(a), F.S.

⁵ *See s.* 106.011(8)(b), F.S.

⁶ Sections 106.071, 106.143, 106.1439, and 106.147, F.S. A failure to include a required disclaimer for an electioneering communication or for a political advertisement paid for by independent expenditure constitutes a first-degree misdemeanor (ss. 106.1439(2) and 106.071(4), F.S.). A willful failure to include a required disclaimer for other political advertisements is subject to prescribed civil penalties (s. 106.143(11), F.S.). A willful violation of text message and telephone solicitation requirements constitutes a first-degree misdemeanor (s. 106.147(4), 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.). In addition to any other penalties provided by law, a person who fails to include the required disclaimer commits a first-degree misdemeanor (s. 106.1436(4), 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. The section does not specify a penalty for failure to include the required statement.

Generally, penalties for failure to include a required disclaimer apply to a “person” as defined in s. 106.011(14), F.S. – an individual or a corporation, association, firm, partnership, joint venture, joint stock company, club, organization, estate, trust, business trust, syndicate or other combination of individuals having collective capacity. The term includes a political party, affiliated party committee, or political committee. Examples of past cases relating to existing Florida Election Code¹⁰ requirements that apply to a “person:”

- Allowed for an officer of a political committee to be held personally liable for failure to include a required disclaimer on a political advertisement;¹¹
- Imposed penalties on a political consulting firm and the president of the firm for failing to include disclaimers in, and report expenditures for, certain independent political advertisements;¹²
- Imposed penalties on a political committee for exceeding contribution limits;¹³ and
- Allowed a corporation to be criminally charged for exceeding a contribution limit.¹⁴

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

Florida Elections Commission

The Florida Elections Commission (commission) has jurisdiction¹⁵ to investigate and determine violations of campaign finance laws and other specified provisions of the Florida Election Code¹⁶ upon receipt of a report by the Division of Elections¹⁷ or a sworn complaint.¹⁸ Upon a finding of a violation of one of the laws under its jurisdiction, the commission, or in cases referred to the Division of Administrative Hearings, an administrative law judge, may impose fines up to \$2,500 per count.¹⁹

Election-Related Use of Artificial Intelligence

Effect of AI Use on Elections

Nationally, the proliferation of generative AI²⁰ use and its outpacing of government regulation has created concern among policymakers about its potentially negative effect on the electoral

¹⁰ Chapters 97-106, F.S., are known as “The Florida Election Code” (s. 97.011, F.S.).

¹¹ See *Fulton v. Division of Elections*, 689 So.2d 1180 (Fla. Dist. Ct. App. 1997).

¹² See *Guetzloe v. Florida Elections Commission*, 927 So.2d 942 (Fla. Dist. Ct. App. 2006).

¹³ See *Florida PBA-PAC v. Division of Elections*, 430 So.2d 483 (Fla. Dist. Ct. App. 1983).

¹⁴ See *Winn-Dixie Stores, Inc., v. State of Florida*, 408 So.2d 211 (Fla. 1982).

¹⁵ For the purposes of commission jurisdiction, a violation means the willful performance of an act prohibited by ch. 104 or 106, F.S., or the willful failure to perform an act required by such chapters. Willfulness is a determination of fact. Section 106.25(3), F.S.

¹⁶ Section 106.25(2), F.S. The commission is housed within the Department of Legal Affairs, but is not subject to the department’s control, supervision, or direction (s. 106.24(1), F.S.).

¹⁷ The Division of Elections is an administrative unit of the Department of State (s. 97.021(9), F.S.).

¹⁸ Section 106.25(4), F.S.

¹⁹ Section 106.265, F.S. The fine may be multiplied by a factor of 3, not to exceed \$7,500, after a person commits three counts of the same category of offense. If applicable, the commission or administrative law judge may instead impose a civil penalty as provided in s. 104.271 or s. 106.19, F.S.

²⁰ 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.

process. Specific concerns include, but are not limited to, voter misinformation by chatbots,²¹ phishing scams on election officials through AI-generated voices, and the use of deepfakes²² to deceive voters and damage political rivals. Over time, the use of AI may also erode trust in authentic information.²³

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.²⁴

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.²⁵
- Bills requiring political advertisements that include content generated by AI to bear a disclaimer stating such.²⁶
- A bill prohibiting the distribution of materially deceptive AI-generated audio or visual media relating to candidates for federal office.²⁷
- A bill prohibiting certain political communications that contain materially deceptive audio generated by AI which impersonates a candidate’s voice.²⁸

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.²⁹ The commission sought public testimony on the petition. Public comment closed on October 16, 2023, and the commission has not yet taken further action.³⁰

²¹ 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)).

²² 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).

²³ 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).

²⁴ *See* [ai.gov](https://www.ai.gov) (last visited January 12, 2024), and Executive Order No. 14110, *Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence*, 88 Fed. Reg. 75191 (Oct. 30, 2023).

²⁵ By Senators Richard Blumenthal and Josh Hawley. A bill has not yet been filed.

²⁶ 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.

²⁷ S. 2077 (Senator Amy Klobuchar).

²⁸ H.R. 4611 (Representative Adriano Espaillat).

²⁹ The statutory prohibition is found in 52 U.S.C. 30124.

³⁰ 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).

Related to robocalls generally, on February 8, 2024, the Federal Communications Commission released an order that interprets the Telephone Consumer Protection Act’s restrictions on the use of “artificial or prerecorded voice”³¹ to encompass current AI technologies that generate human voices.³² As a result, calls that use such technologies, including political calls, will “require the prior express consent of the called party to initiate such calls absent an emergency purpose or exemption.”³³

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.³⁴

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.³⁵

³¹ See 47 U.S.C. § 227(b); 47 CFR § 64.1200(a)(1), (3).

³² The Telephone Consumer Protection Act of 1991 regulates any call made using an “automatic telephone dialing system” or an artificial or prerecorded voice. Any such call is considered a “robocall.” See Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), *codified at* 47 U.S.C. § 227.

³³ Federal Communications Commission declaratory ruling, *In the Matter of Implications of Artificial Intelligence Technologies on Protecting Consumers from Unwanted Robocalls and Robotexts*, released February 8, 2024.

³⁴ 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).

³⁵ *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).

III. Effect of Proposed Changes:

This bill creates a definition for “generative AI” and requires certain types of political advertising to bear a disclaimer if created with AI.

Specifically, 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 requires a political advertisement, electioneering communication, or other miscellaneous advertisement of a political nature that 1) contains images, video, audio, graphics, or 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 prescribes additional disclaimer characteristics for specific types of generated content, as follows:

- For a printed communication, the disclaimer must be stated in bold font with a font size of at least 12 points.
- For a television or video communication, the disclaimer must be clearly readable throughout the communication and occupy at least 4 percent of the vertical picture height.
- For an internet public communication³⁶ that includes text or graphic components, the disclaimer must be viewable without the user taking any action and be large enough to be clearly readable.
- For any audio component of a communication, the disclaimer must be at least 3 seconds in length and spoken in a clearly audible and intelligible manner at either the beginning or the end of the audio component.
- For a graphic communication, the disclaimer must appear in letters at least as large as the majority of the text in the communication.

In addition to any civil penalties provided by law,³⁷ a person³⁸ who pays for, sponsors, or approves a political advertisement, electioneering communication, or other miscellaneous advertisement of a political nature which is required to contain the AI disclaimer but fails to include it commits a first-degree misdemeanor. The bill provides an expedited process for resolution of a civil complaint to the Florida Elections Commission of a violation of this disclaimer requirement.

The bill takes effect July 1, 2024.

³⁶ As used in federal regulations, “public communications” include electioneering communications and any other form of general public political advertising (*see* 11 C.F.R. § 100.26).

³⁷ 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.

³⁸ The definition of “person” in s. 106.011(14), F.S., applies.

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.³⁹ Content-based restrictions are presumptively invalid.⁴⁰ 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.⁴¹

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.

³⁹ See, e.g., *Texas v. Johnson* (491 U.S. 397 (1989)); *State v. T.B.D.*, 656 So.2d 479 (Fla. 1995).

⁴⁰ See, e.g., *Police Dept. of Chicago v. Mosley*, 408 U.S. 92 (1972).

⁴¹ *City of Dallas v. Stanglin*, 490 U.S. 19 (1989).

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/CS by Rules on February 8, 2024:

The committee substitute:

- Specifies additional requirements for the disclaimer in various types of content;
- Clarifies that in addition to the criminal penalty provided by the bill, a failure to include the required disclaimer is subject to existing civil penalties; and
- Clarifies that the person who can be held liable for a failure to include the required disclaimer is the person who must otherwise be listed in a disclaimer as paying for, sponsoring, or approving the advertisement or communication.

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.