

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 182

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

AN ACT

RELATING TO ELECTIONS; AMENDING AND ENACTING SECTIONS OF THE
CAMPAIGN REPORTING ACT BY ADDING DISCLAIMER REQUIREMENTS FOR
ADVERTISEMENTS CONTAINING 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
to a candidate or ballot question that is published,
disseminated, distributed or displayed to the public by print,

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1 broadcast, satellite, cable or electronic media, including
2 recorded phone messages, or by printed materials, including
3 mailers, handbills, signs and billboards, but "advertisement"
4 does not include:

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

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

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

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

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

24 B. "anonymous contribution" means a contribution
25 the contributor of which is unknown to the candidate or the

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1 candidate's agent or the political committee or its agent who
2 accepts the contribution;

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

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

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

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

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

22 [~~G.~~] H. "candidate" means an individual who seeks
23 or considers an office in an election covered by the Campaign
24 Reporting Act, including a public official, who has filed a
25 declaration of candidacy and has not subsequently filed a

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1 statement of withdrawal or:

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

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

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

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

21 (2) includes a coordinated expenditure;

22 (3) does not include the value of services
23 provided without compensation or unreimbursed travel or other
24 personal expenses of individuals who volunteer a portion or all
25 of their time on behalf of a candidate or political committee

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

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

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

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

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

16 (3) for the purpose of:

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

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

24 [~~J.~~] K. "deliver" or "delivery" means to deliver by
25 certified or registered mail, telecopier, electronic

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1 transmission or facsimile or by personal service;

2 L. "depicted individual" means an individual whose
3 image, photo, likeness or voice is represented in an
4 advertisement or other media in such a manner that results in
5 the individual being identifiable;

6 M. "distribution platform" means a website,
7 internet forum or message board, application or a published
8 newspaper, magazine or other periodical of general circulation,
9 including an internet or electronic publication, that carries
10 news and commentary;

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

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

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

23 ~~[N.]~~ Q. "independent expenditure" means an
24 expenditure that is:

- 25 (1) made by a person other than a candidate or

1 campaign committee;

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

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

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

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

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

17 ~~[0.]~~ R. "legislative caucus committee" means a
18 political committee established by the members of a political
19 party in a chamber of the legislature;

20 S. "materially deceptive media" means an image,
21 video or audio that:

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

24 (2) was published, disseminated, distributed
25 or displayed to the public without the consent of the depicted

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1 individual; and

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

4 [P-] T. "person" means an individual or entity;

5 [Q-] U. "political committee" means:

6 (1) a political party;

7 (2) a legislative caucus committee;

8 (3) an association that consists of two or
9 more persons whose primary purpose is to make contributions to
10 candidates, campaign committees or political committees or make
11 coordinated expenditures or any combination thereof; or

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

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

21 [S-] W. "political purpose" means for the purpose
22 of supporting or opposing a ballot question or the nomination
23 or election of a candidate;

24 [T-] X. "prescribed form" means a form or
25 electronic format prepared and prescribed by the secretary of

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1 state;

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

6 [V-] Z. "reporting individual" means a public
7 official, candidate or treasurer of a campaign committee or a
8 treasurer of a political committee."

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

11 "1-19-26.4. DISCLAIMERS IN ADVERTISEMENTS--ARTIFICIAL
12 INTELLIGENCE--MATERIALLY DECEPTIVE MEDIA--VIOLATION--PENALTY.--

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

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

25 (1) bumper stickers, pins, buttons, pens and

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1 similar small items upon which the disclaimer cannot be
2 conveniently printed; or

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

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

14 D. If a person creates, produces or purchases an
15 advertisement that contains materially deceptive media, the
16 advertisement shall include a disclaimer. The disclaimer shall
17 appear in a clear and conspicuous manner in every language used
18 in the advertisement and shall indicate: "This _____ has been
19 manipulated or generated by artificial intelligence". The
20 blank line in the disclaimer shall be filled with each of the
21 following terms that describes the media:

22 (1) image;

23 (2) video; or

24 (3) audio.

25 E. The disclaimer required in Subsection D of this

1 section shall be included as follows:

2 (1) for visual media that is an image, the
3 text of the disclaimer shall appear in a size that is easily
4 readable;

5 (2) for visual media that is video, the
6 disclaimer shall appear for the duration of the video in a size
7 that is easily readable;

8 (3) for media that contains audio only, the
9 disclaimer shall be read in a clearly spoken manner and in a
10 pitch that can be easily heard at the beginning of the audio,
11 at the end of the audio and, if the audio is greater than two
12 minutes in length, interspersed within the audio at intervals
13 of not greater than two minutes each; and

14 (4) for mixed media, there shall be a
15 disclaimer in the same form as provided in this section for
16 each form of media used.

17 F. Each occurrence of a person creating, producing
18 or purchasing an advertisement subject to the disclaimer
19 requirements as provided in Subsection D of this section that
20 fails to meet the disclaimer requirements constitutes a
21 separate violation. A person found to have violated the
22 requirements provided in Subsection D of this section shall be
23 subject to civil penalties as provided in Section 1-19-34.6
24 NMSA 1978.

25 G. It is not a violation of this section for:

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1 (1) a radio or television broadcasting
2 station, including a cable television, satellite television or
3 streaming service operator, programmer or producer, that
4 broadcasts an advertisement as part of a bona fide newscast,
5 news interview, news documentary or on-the-spot coverage of a
6 bona fide news event if the broadcast clearly acknowledges
7 through content or a disclaimer, in a manner that can be easily
8 read or heard, that the advertisement was generated in whole or
9 in part by using artificial intelligence and does not
10 accurately represent the speech or conduct of the depicted
11 individual;

12 (2) a radio or television broadcasting
13 station, including a cable television, satellite television or
14 streaming service operator, programmer or producer, that
15 broadcasts an advertisement when the station or streaming
16 service is paid to broadcast the advertisement if the station
17 or streaming service can show that it has disclaimer
18 requirements that are consistent with the requirements provided
19 in Subsection D of this section and that it provided those
20 disclaimer requirements to each person or entity that purchased
21 the broadcast or streaming of the advertisement;

22 (3) an advertisement that reasonably
23 constitutes satire or parody if the advertisement includes a
24 disclaimer consistent with the requirements provided in
25 Subsection D of this section; and

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1 (4) a distribution platform that published,
 2 posted or distributed an advertisement or a prerecorded phone
 3 message if the distribution platform can show that it has
 4 disclaimer requirements that are consistent with the
 5 requirements provided in Subsection D of this section and that
 6 it provided those disclaimer requirements to the person or
 7 entity that purchased the distribution of the advertisement or
 8 prerecorded phone message by or on the distribution platform.

9 H. Nothing in this section shall be construed to
 10 preclude a claim pursuant to any other section of law or any
 11 civil action for damages."

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

14 "1-19-26.8. [NEW MATERIAL] PROHIBITED USE OF MATERIALLY
 15 DECEPTIVE MEDIA--DISCLAIMERS REQUIRED--CRIME FOR VIOLATION--
 16 EXCEPTIONS--ENFORCEMENT.--

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

24 (1) the person knows the materially deceptive
 25 media falsely represents a depicted individual;

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

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

8 B. The prohibition provided in Subsection A of this
9 section does not apply to materially deceptive media if that
10 media includes a disclaimer that appears in a clear and
11 conspicuous manner in every language used in the media and
12 indicates: "This ____ has been manipulated or generated by
13 artificial intelligence". The blank line in the disclaimer
14 shall be filled in with each of the following terms that
15 describes the media:

16 (1) image;

17 (2) video; or

18 (3) audio.

19 C. The disclaimer required in Subsection B of this
20 section shall be included as follows:

21 (1) for visual media that is an image, the
22 text of the disclaimer shall appear in a size that is easily
23 readable;

24 (2) for visual media that is video, the
25 disclaimer shall appear for the duration of the video;

1 (3) for media that contains audio only, the
2 disclaimer shall be read in a clearly spoken manner and in a
3 pitch that can be easily heard at the beginning of the audio,
4 at the end of the audio, and if the audio is greater than two
5 minutes in length, interspersed within the audio at intervals
6 of not greater than two minutes each; and

7 (4) for mixed media, there shall be a
8 disclaimer in the same form as provided in this section for
9 each form of media used.

10 D. A person found to have willfully and knowingly
11 violated the prohibition provided in Subsection A of this
12 section is guilty of a crime as follows:

13 (1) for a first conviction, a misdemeanor; and

14 (2) for a second conviction, a fourth degree
15 felony.

16 E. Enforcement of the provisions of this section,
17 including injunctive relief, against a person who violates this
18 section may be sought in any court of competent jurisdiction by
19 any of the following:

20 (1) the attorney general;

21 (2) a district attorney;

22 (3) a depicted individual who is falsely
23 represented;

24 (4) a candidate for office who has been
25 injured or is likely to be injured by the distribution of

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1 materially deceptive media; or

2 (5) any organization that represents the
3 interests of voters who are likely to be misled by the
4 distribution of materially deceptive media.

5 F. Nothing in this section shall be construed to
6 preclude a claim pursuant to any other section of law or any
7 civil action for damages."

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