

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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underscored material = new
[bracketed material] = delete

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

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 [~~G.~~] 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 clearly identifiable by an average viewer
6 or listener of the advertisement or media;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (2) upon viewing or listening, a reasonable

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1 viewer or listener would incorrectly believe that the depicted
2 individual engaged in the conduct or speech depicted in the
3 media; and

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

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

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

8 (1) a political party;

9 (2) a legislative caucus committee;

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

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

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

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

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

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

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

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

13 "1-19-26.4. **DISCLAIMERS IN ADVERTISEMENTS--ARTIFICIAL**
14 **INTELLIGENCE--MATERIALLY DECEPTIVE MEDIA--VIOLATION--PENALTY.--**

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

25 B. The requirements of Subsection A of this section

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1 do not apply to the following:

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

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

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

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

24 (1) image;

25 (2) video; or

1 (3) audio.

2 E. The disclaimer required in Subsection D of this
3 section shall be included as follows:

4 (1) for visual media that is an image, the
5 text of the disclaimer shall appear in a size that is easily
6 readable by the average viewer;

7 (2) for visual media that is video, the
8 disclaimer shall appear for the duration of the video in a size
9 that is easily readable by the average viewer; and

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

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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[bracketed material] = delete

1 (1) a radio or television broadcasting
2 station, including a cable or satellite television operator,
3 programmer or producer, that broadcasts an advertisement as
4 part of a bona fide newscast, news interview, news documentary
5 or on-the-spot coverage of a bona fide news event if the
6 broadcast clearly acknowledges through content or a disclaimer,
7 in a manner that can be easily read or heard by an average
8 viewer or listener, that the advertisement was generated in
9 whole or 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 or satellite television operator,
14 programmer or producer, that broadcasts an advertisement when
15 the station is paid to broadcast the advertisement if the
16 station can show that it provided its disclaimer requirements
17 that are consistent with the requirements provided in
18 Subsection D of this section to each person or entity that
19 created, produced, published or distributed the advertisement
20 for broadcast on the station;

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

25 (4) a distribution platform that published,

1 posted or distributed an advertisement or a prerecorded phone
2 message if the distribution platform can show that it provided
3 its disclaimer requirements that are consistent with the
4 requirements provided in Subsection D of this section to the
5 person who created, produced, published, posted or distributed
6 the advertisement or prerecorded phone message by or on the
7 distribution platform.

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

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

13 "1-19-26.8. [NEW MATERIAL] PROHIBITED USE OF MATERIALLY
14 DECEPTIVE MEDIA--DISCLAIMERS REQUIRED--CRIME FOR VIOLATION--
15 EXCEPTIONS--ENFORCEMENT.--

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

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

25 (2) the distribution occurs within ninety

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1 days before an election; and

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

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

14 (1) image;

15 (2) video; or

16 (3) audio.

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

19 (1) for visual media that is an image, the
20 text of the disclaimer shall appear in a size that is easily
21 readable by the average viewer;

22 (2) for visual media that is video, the
23 disclaimer shall appear for the duration of the video; and

24 (3) for media that contains audio only, the
25 disclaimer shall be read in a clearly spoken manner and in a

1 pitch that can be easily heard by the average listener at the
2 beginning of the audio, at the end of the audio, and if the
3 audio is greater than two minutes in length, interspersed
4 within the audio at intervals of not greater than two minutes
5 each.

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

9 (1) for a first violation, a misdemeanor
10 punishable by imprisonment for not more than ninety days or a
11 fine of not more than five hundred dollars (\$500), or both; or

12 (2) for a violation that occurs within five
13 years of a previous conviction for a violation under this
14 section, a felony punishable by imprisonment for not more than
15 five years or a fine of not more than one thousand dollars
16 (\$1,000), or both.

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

- 21 (1) the attorney general;
22 (2) a district attorney;
23 (3) a depicted individual who is falsely
24 represented;
25 (4) a candidate for office who has been

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1 injured or is likely to be injured by the distribution of
2 materially deceptive media; or

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

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

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