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AB-2355 Political Reform Act of 1974: political advertisements: artificial intelligence. (2023-2024)

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Assembly Bill No. 2355

CHAPTER 260

An act to amend Sections 84504, 84504.1, 84504.2, 84504.3, 84054.4, and 84504.5 of, and to add Section 84514 to, the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor September 17, 2024. Filed with Secretary of State September 17, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2355, Wendy Carrillo. Political Reform Act of 1974: political advertisements: artificial intelligence.

Existing law, the Political Reform Act of 1974, requires certain advertisements to contain specified disclosures. The Fair Political Practices Commission is charged with administering and implementing the act, and may, when it determines a violation has occurred, bring an administrative action and issue an order requiring the violator to cease and desist the violation, file specified documents, or pay a monetary penalty of up to \$5,000 per violation. The commission may also, in certain instances, bring a civil action against any person who violates any provision of the act.

This bill would require a committee that creates, originally publishes, or originally distributes a qualified political advertisement to include in the advertisement a specified disclosure that the advertisement was generated or substantially altered using artificial intelligence, as defined. The bill would prescribe formatting requirements for this disclosure depending on the medium of the qualified political advertisement. The bill would define "qualified political advertisement" to include any advertisement, as specified, that contains any image, audio, or video that is generated or substantially altered using artificial intelligence. The bill would specify that any image, audio, video, or other media is generated or substantially altered using artificial intelligence if it is entirely created using artificial intelligence and would falsely appear to a reasonable person to be authentic or materially altered by artificial intelligence such that a reasonable person would have a fundamentally different understanding of the altered media when comparing it to an unaltered version. The bill would authorize the commission to enforce a violation of these disclosure requirements by seeking injunctive relief to compel compliance or pursuing any other administrative or civil remedies available to the commission under the act. The bill would specify that a violation of these disclosure requirements does not constitute a misdemeanor.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a $\frac{2}{3}$ vote of each house of the Legislature and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 84504 of the Government Code is amended to read:

84504. (a) An advertisement paid for by a committee, other than a political party committee or a candidate controlled committee established for an elective office of the controlling candidate, that is disseminated over the radio or by telephonic means shall include the disclosures required by Sections 84502, 84503, 84506.5, and 84514 at the beginning or end of the advertisement, read in a clearly spoken manner and in a pitch and tone substantially similar to the rest of the advertisement, and shall last no less than three seconds.

(b) Notwithstanding the definition of “top contributors” in paragraph (1) of subdivision (c) of Section 84501, radio and prerecorded telephonic advertisements shall disclose only the top two contributors of fifty thousand dollars (\$50,000) or more unless the advertisement lasts 15 seconds or less or the disclosure statement would last more than eight seconds, in which case only the single top contributor of fifty thousand dollars (\$50,000) or more shall be disclosed.

SEC. 2. Section 84504.1 of the Government Code is amended to read:

84504.1. (a) An advertisement paid for by a committee, other than a political party committee or a candidate controlled committee established for an elective office of the controlling candidate, that is disseminated as a video, including advertisements on television and videos disseminated over the Internet, shall include the disclosures required by Sections 84502, 84503, and 84514 at the beginning or end of the advertisement.

(b) The disclosure required by subdivision (a) shall be written and displayed for at least five seconds of a broadcast of 30 seconds or less or for at least 10 seconds of a broadcast that lasts longer than 30 seconds.

(1) The written disclosure required by subdivision (a) shall appear on a solid black background on the entire bottom one-third of the television or video display screen, or bottom one-fourth of the screen if the committee does not have or is otherwise not required to list top contributors, and shall be in a contrasting color in standard Arial Regular type, and the type size for capital letters in the written disclosure shall be 4 percent of the height or width of the television or video display advertisement, whichever is less.

(2) The disclosure required by Section 84514, if any, shall be white and appear at the top of the disclosure area, and shall be separated from the disclosures required by Sections 84502 and 84503 by a blank horizontal space at least 2 percent of the height of the television or video display screen.

(3) The disclosures required by Section 84502 shall be white and shall follow the disclosure required by Section 84514. The disclosures required by Section 84503, if any, shall be yellow, such as HTML hex value #FFFF00, and shall be separated from the disclosures required by Section 84502 by a blank horizontal space at least 2 percent of the height of the television or video display screen. The top contributors, if any, shall each be disclosed on a separate horizontal line separate from any other text, in descending order, beginning with the top contributor who made the largest cumulative contributions on the first line. All disclosure text shall be centered horizontally in the disclosure area. If there are any top contributors, the written disclosures shall be underlined in a manner clearly visible to the average viewer, except for the names of the top contributors, if any.

(4) The names of the top contributors shall not have their type condensed or have the spacing between characters reduced to be narrower than a normal non-condensed standard Arial Regular type.

(5) If the name of one or more top contributor exceeds the width of the screen and is required to wrap onto a second line, then the names of contributors shall be clearly marked, using a highly visible symbol or minimum vertical separation defined by the Commission, to indicate where one top contributor name ends and the next begins.

(c) An advertisement that is an independent expenditure supporting or opposing a candidate shall include the appropriate statement from Section 84506.5 printed immediately above the background with sufficient contrast that is easily readable by the average viewer.

(d) Any text or image not required in this section shall not appear in the disclosure area, except as provided in Section 84504.8 and as otherwise authorized or required by applicable law.

SEC. 3. Section 84504.2 of the Government Code, as amended by Section 5 of Chapter 777 of the Statutes of 2018, is amended to read:

84504.2. (a) A print advertisement paid for by a committee, other than a political party committee or a candidate controlled committee established for an elective office of the controlling candidate, shall include the disclosures required by Sections 84502, 84503, 84506.5, and 84514, displayed as follows:

(1) The disclosure area shall have a solid white background and shall be in a printed or drawn box on the bottom of at least one page that is set apart from any other printed matter. All text in the disclosure area shall be in contrasting color and centered horizontally in the disclosure area.

(2) The text shall be in an Arial equivalent type with a type size of at least 10-point for printed advertisements designed to be individually distributed, including, but not limited to, mailers, flyers, and door hangers.

(3) The disclosure required by Section 84514, if any, shall appear at the top of the disclosure area, and shall be separated from the disclosures required by Sections 84502 and 84503 by a blank line.

(4) The disclosures required by Sections 84502 and 84503 shall follow the disclosure required by Section 84514. The text of the disclosure shall be underlined if there are any top contributors.

(5) The top contributors, if any, shall each be disclosed on a separate horizontal line separate from any other text, in descending order, beginning with the top contributor who made the largest cumulative contributions on the first line. The name of each of the top contributors shall be centered horizontally in the disclosure area and shall not be underlined. The names of the top contributors shall not be printed in a type that is condensed to be narrower than a normal non-condensed Arial equivalent type.

(6) A committee subject to Section 84506.5 shall include the disclosure required by Section 84506.5, which shall be underlined and on a separate line below any of the top contributors.

(7) A committee subject to Section 84223 shall next include the text "Funding Details At [insert Commission Internet Website]," which shall be underlined and printed on a line separate from any other text.

(b) Notwithstanding paragraphs (2) and (5) of subdivision (a), the disclosures required by Sections 84502, 84503, 84506.5, and 84514 on a printed advertisement that is larger than those designed to be individually distributed, including, but not limited to, yard signs or billboards, shall be in Arial equivalent type with a total height of at least 5 percent of the height of the advertisement, and printed on a solid background with sufficient contrast that is easily readable by the average viewer. The text may be adjusted so it does not appear on separate horizontal lines, with the top contributors separated by a comma.

(c) Notwithstanding the definition of "top contributors" in paragraph (1) of subdivision (c) of Section 84501, newspaper, magazine, or other public print advertisements that are 20 square inches or less shall be required to disclose only the single top contributor of fifty thousand dollars (\$50,000) or more.

SEC. 4. Section 84504.2 of the Government Code, as amended by Section 12 of Chapter 887 of the Statutes of 2022, is amended to read:

84504.2. (a) A print advertisement designed to be individually distributed, including, but not limited to, a mailer, flyer, or door hanger, that is paid for by a committee, other than a political party committee or a candidate controlled committee established for an elective office of the controlling candidate, shall include the disclosures required by Sections 84502, 84503, 84506.5, and 84514, displayed as follows:

(1) The disclosure area shall have a solid white background and shall be in a printed or drawn box on the bottom of at least one page that is set apart from any other printed matter. All text in the disclosure area shall be in contrasting color and centered horizontally in the disclosure area.

(2) The text shall be in standard Arial Regular type with a type size of at least 10-point.

(3) The disclosure required by Section 84514, if any, shall appear at the top of the disclosure area, and shall be separated from the disclosures required by Sections 84502 and 84503 by a blank line.

(4) The disclosures required by Sections 84502 and 84503 shall follow the disclosure required by Section 84514. The text of the disclosure shall be underlined if there are any top contributors.

(5) The top contributors, if any, shall each be disclosed on a separate horizontal line separate from any other text, in descending order, beginning with the top contributor who made the largest cumulative contributions on the first line. The name of each of the top contributors shall be centered horizontally in the disclosure area and shall not be underlined. The names of the top contributors shall not be printed in a type that is condensed to be narrower than a normal non-condensed standard Arial Regular type.

(6) An advertisement supporting or opposing a candidate that is paid for by an independent expenditure shall include the disclosure required by Section 84506.5, which shall be underlined and on a separate line below any of the top contributors.

(7) A committee subject to Section 84223 shall next include the text "Funding Details At [insert link to Secretary of State internet website page with top 10 contributor lists]," which shall be underlined and printed on a line separate from any other text at the bottom of the disclosure area.

(8) Notwithstanding the definition of "top contributors" in paragraph (1) of subdivision (c) of Section 84501, newspaper, magazine, or other public print advertisements that are 20 square inches or less shall be required to disclose only the largest top contributor of fifty thousand dollars (\$50,000) or more.

(b) A print advertisement that is larger than those designed to be individually distributed, including, but not limited to, a yard sign or billboard, paid for by a committee, other than a political party committee or a candidate controlled committee established for an elective office of the controlling candidate, shall include the disclosures pursuant to Section 84502, 84503, 84506.5, and 84514 in a printed or drawn box with a solid white background on the bottom of the advertisement that is set apart from any other printed matter. Each line of the written disclosures shall be in a contrasting color in standard Arial Regular type no less than 5 percent of the height of the advertisement, and shall not be condensed to be narrower than a normal non-condensed standard Arial Regular type. The text may be adjusted so it does not appear on separate horizontal lines, with the top contributors separated by a comma.

(c) Any text or image not required in this section shall not appear in the disclosure area, except as provided in Section 84504.8 and as otherwise authorized or provided by applicable law.

SEC. 5. Section 84504.3 of the Government Code is amended to read:

84504.3. (a) This section applies to an electronic media advertisement if either of the following is true:

(1) The advertisement is paid for by a committee other than a political party committee or a candidate controlled committee established for an elective office of the controlling candidate.

(2) The advertisement is paid for by a political party committee or a candidate controlled committee established for an elective office of the controlling candidate, and is either of the following:

(A) Paid for by an independent expenditure.

(B) An advertisement supporting or opposing a ballot measure.

(b) An electronic media advertisement that is a graphic, image, animated graphic, or animated image that the online platform hosting the advertisement allows to link to an internet website paid for by a committee shall comply with both of the following:

(1) Unless the disclosure area described in paragraph (2) includes the full disclosure text required by Sections 84502, 84503, 84506.5, and 84514, the advertisement shall contain a hyperlink to an internet website containing the disclosures required by Sections 84502, 84503, 84506.5, and 84514 in a contrasting color and in no less than 11-point font.

(2) The advertisement shall include, for the duration of the advertisement, the disclosures required by Section 84514, if any, followed by the disclosures required by Section 84502, if any, followed by the disclosures required by Section 84503, if any, displayed according to the following:

(A) The disclosure area shall have a solid white or black background and shall be in a box on the bottom of the advertisement. The text in the disclosure area shall be in a contrasting color and in standard Arial Regular type with a type size of at least 11-point and shall not have its type condensed or have the spacing between characters reduced to be narrower than a normal non-condensed standard Arial Regular type.

(B) The disclosure required by Section 84514, if any, shall appear at the top of the disclosure area, and shall be separated from the disclosure required by Section 84502 by a blank line.

(C) Notwithstanding Section 84503, the disclosure area may disclose only the largest top contributor to the committee paying for the advertisement, and the disclosure area may include the words "Top Funder" or "Top Funders" instead of "Ad Committee's Top Funders" or "Ad Committee's Top Funder."

(D) The disclosure required by Section 84506.5 may be displayed at the bottom of the disclosure box, separated from the disclosures required by Section 84503 by a blank horizontal line. This text is not required to be displayed in the disclosure area if the advertisement hyperlinks to a website containing the disclosures as described by paragraph (1).

(3) Notwithstanding paragraph (2), if the image takes up fewer than 65,000 square pixels, i.e., is smaller than a standard 728 by 90 pixel leaderboard image advertisement, then the disclosure area described in paragraph (2) may instead include the text "Who funded this ad?". This text shall be in standard Arial Regular type with a type size of at least 8-point.

(4) Notwithstanding paragraphs (2) and (3), the disclosure area required by paragraph (2) is not required if it would take up more than 10 percent of the graphic or image even using the "Who funded this ad?" option allowed by paragraph (3). In those circumstances, the advertisement need only include a hyperlink to an internet website containing the disclosures required by Sections 84502, 84503, 84506.5, and 84514.

(5) Any text or image not required by this subdivision shall not appear in the disclosure area, except as provided in Section 84504.8 and as otherwise authorized or required by applicable law.

(c) Notwithstanding subdivision (a), an email message or internet website paid for by a committee shall include the disclosures required by Sections 84502, 84503, 84506.5, and 84514 printed clearly and legibly in a contrasting color and in no less than 8-point font at the top or bottom of the email message, or at the top or bottom of every publicly accessible page of the internet website, as applicable.

(d) An internet website that is linked as provided for in paragraphs (1) and (4) of subdivision (b) shall remain online and available to the public until 30 days after the date of the election in which the candidate or ballot measure supported or opposed by the advertisement was voted upon.

(e) An advertisement made via a form of electronic media that is audio only and therefore cannot include either of the disclosures in subdivision (b) shall comply with the disclosure requirements for radio advertisements in Section 84504.

(f) An electronic media advertisement that is disseminated as a video shall comply with the disclosure requirements of Sections 84504.1 and 84504.5, depending on the type of committee that paid for it. If the video is longer than 30 seconds, the disclosures required by Sections 84504.1 and 84504.5 shall be made at the beginning of the advertisement.

(g) An advertisement in the form of a post, comment, or similar communication made via a form of electronic media that allows users to engage in discourse and post content, or any other type of social media, is not required to include the disclosure provided in subdivision (b) if both of the following apply:

(1) The advertisement was posted directly by the social media page or account of the committee that paid for the advertisement.

(2) (A) The disclosures required by Sections 84502, 84503, 84506.5, and 84514 are included on the cover or header photo of the committee's profile, landing page, or similar location for the committee's page or account from which the post, comment, or similar communication was made in a contrasting color that is easily readable by the average viewer and in no less than 10-point font. The disclosures specified in this subparagraph shall be fully visible on the cover or header photo when the profile, landing page, or similar location is viewed from any electronic device that is commonly used to view this form of electronic media, including, but not limited to, a computer screen, laptop, tablet, or smart phone.

(B) Notwithstanding subparagraph (A), if making the disclosures specified in subparagraph (A) fully visible on a commonly used electronic device would be impracticable, the cover or header photo of the profile, landing page, or similar location need only include a hyperlink, icon, button, or tab to an internet website containing the disclosures specified in subparagraph (A).

(h) The disclosures required by this section do not apply to advertisements made via social media for which the only expense or cost of the communication is compensated staff time unless the social media account where the content is posted was created only for the purpose of advertisements governed by this title.

SEC. 6. Section 84504.4 of the Government Code is amended to read:

84504.4. (a) A radio or television advertisement that is paid for by a political party or a candidate controlled committee established for an elective office of the controlling candidate, and that does not support or oppose a ballot measure and is not paid for by an independent expenditure, shall include the disclosure required by Section 84502 and the disclosure required by Section 84514, if any, subject to the following requirements:

(1) In a radio advertisement, the words shall be included at the beginning or end of the advertisement and read in a clearly spoken manner and in a pitch and tone substantially similar to the rest of the advertisement.

(2) In a television advertisement, the words shall appear in writing for at least four seconds with letters in a type size that is greater than or equal to 4 percent of the height of the screen.

(b) An advertisement that is made via a form of electronic media that allows users to engage in discourse and post content, or any other type of social media, that is paid for by a political party or a candidate controlled committee established for an elective office of the controlling candidate, and that does not support or oppose a ballot measure and is not paid for by an independent expenditure, shall include the disclosure required by Section 84502 in accordance with subdivision (g) of Section 84504.3.

SEC. 7. Section 84504.5 of the Government Code is amended to read:

84504.5. An advertisement that is an independent expenditure and paid for by a political party or a candidate controlled committee established for an elective office of the controlling candidate shall include the disclosures required by Sections 84502, 84506.5, and 84514. An advertisement that supports or opposes a ballot measure and is paid for by a political party or a candidate controlled committee established for an elective office of the controlling candidate shall include the disclosure required by Section 84502. A disclosure that is included in an advertisement pursuant to this section is subject to the following requirements:

(a) A radio or telephone advertisement shall include the required disclosures at the beginning or end of the advertisement and be read in a clearly spoken manner and in a pitch and tone substantially similar to the rest of the advertisement, and shall last no less than three seconds.

(b) A video advertisement, including television and videos disseminated over the internet, shall include the required disclosures in writing at the beginning or end of the advertisement in a text that is of sufficient size to be readily legible to an average viewer and in a color that has a reasonable degree of contrast with the background of the advertisement for at least four seconds. The required disclosure must also be spoken during the advertisement if the written disclosure appears for less than five seconds of a broadcast of 30 seconds or less or for less than 10 seconds of a broadcast that lasts longer than 30 seconds.

(c) (1) A print advertisement shall include the required disclosures in no less than 10-point font and in a color that has a reasonable degree of contrast with the background of the advertisement.

(2) Notwithstanding paragraph (1), each line of the required disclosures on a print advertisement that is larger than those designed to be individually distributed, such as a yard sign or billboard, shall in total constitute no less than 5 percent of the total height of the advertisement and shall appear in a color that has a reasonable degree of contrast with the background of the advertisement.

(d) An electronic media advertisement shall include the disclosures required by Section 84504.3.

SEC. 8. Section 84514 is added to the Government Code, immediately following Section 84513, to read:

84514. (a) (1) If a committee, as defined in Section 82013, creates, originally publishes, or originally distributes a qualified political advertisement, the qualified political advertisement shall include, in a clear and conspicuous manner, the following disclosure: "Ad generated or substantially altered using artificial intelligence."

(2) The disclosure required by paragraph (1) shall be displayed or spoken in the manner prescribed in Section 84504, 84504.1, 84504.2, 84504.3, 84504.4, or 84504.5, as applicable.

(b) This section does not alter or negate any rights, obligations, or immunities of an interactive service provider under Section 230 of Title 47 of the United States Code.

(c) (1) If a committee does not comply with the requirements of subdivision (a), the Commission may take either of the following actions:

(A) Seek injunctive relief to compel compliance pursuant to Section 90009.

(B) Pursue any administrative or civil remedies available under Chapter 3 (commencing with Section 83100) or Chapter 11 (commencing with Section 91000).

(2) A violation of subdivision (a) shall not constitute a misdemeanor under Chapter 11 (commencing with Section 91000).

(d) For purposes of this section, the following definitions apply:

(1) "Artificial intelligence" means an engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments.

(2) (A) Any image, audio, video, or other media is "generated or substantially altered using artificial intelligence" if either of the following conditions are met:

(i) The visual or audio media is entirely created using artificial intelligence and would falsely appear to a reasonable person to be authentic.

(ii) The visual or audio media is materially altered by artificial intelligence such that the alteration would cause a reasonable person to have a fundamentally different understanding of the altered media when comparing it to an unaltered version.

(B) Any image, audio, video, or other media is not "generated or substantially altered using artificial intelligence" if the media is immaterially altered by artificial intelligence, including a cosmetic adjustment, color edit, cropped image, or resized image.

(3) "Qualified political advertisement" means an advertisement that contains any image, audio, or video that is generated or substantially altered using artificial intelligence.

SEC. 9. The Legislature finds and declares that this bill furthers the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.