

SESSION OF 2024

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2559

As Amended by House Committee on Elections

Brief*

HB 2559, as amended, would expand the definition of the crime of “corrupt political advertising” in statutes defining election crimes and in the Campaign Finance Act to prohibit the use of synthetic media in election campaign communications to alter the appearance, action, or speech of a candidate unless certain disclosures are made. The bill also would prohibit using synthetic media in any communication to alter the appearance, action, or speech of an elected or appointed state official unless certain disclosures are made, as an election crime.

[*Note:* Continuing law provides that the crime of corrupt political advertising is a Class C misdemeanor. If the action violates the Campaign Finance Act, continuing law provides that the Kansas Governmental Ethics Commission (KGEC) may assess a civil fine for a violation of the Campaign Finance Act in an amount not to exceed \$5,000 for the first violation, \$10,000 for the second violation, and \$15,000 for the third violation and for each subsequent violation. The fine imposed by KGEC in any one matter must not exceed an amount that is triple the applicable fine for a single violation.]

Definition of “Synthetic Media”

The bill would define the term “synthetic media” as an image, an audio recording, or a video recording of an individual’s appearance, speech, or conduct that has been intentionally manipulated with the use of generative artificial

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

intelligence (AI) techniques or other digital technology in a manner that creates a realistic but false or inaccurate image, audio, or video that produces:

- A depiction, that to a reasonable individual, is of a real individual in appearance, action, or speech but that did not actually occur in reality; and
- A fundamentally different understanding or impression of the appearance, action, or speech than a reasonable person would otherwise have from the unaltered, original version of the image, audio recording, or video recording.

Affirmative Defense

The bill would create an affirmative defense if a communication includes a disclosure stating: “This (image/video/audio) has been manipulated.” The bill would also require the disclosure to be expressed in certain ways:

- For visual media, the text of the disclosure must appear in a size easily readable by the average viewer and no smaller than the largest font size of the other text appearing in the visual media;
- For visual media that does not include any other text, the disclosure must appear in a size that is easily readable by the average viewer;
- For visual media that is a video, the disclosure must appear for the duration of the video; or
- For audio-only media, the disclosure must be read:
 - In a clearly spoken manner and in a pitch that can be easily heard by the average listener;
 - At the beginning of the audio;
 - At the end of the audio; and

- If the audio is greater than two minutes long, interspersed within the audio at intervals of no more than two minutes each.

Liability for Violations

The bill would provide that the responsibility for including the required disclosure in advertisements and communications and the liability for any failure to include the required disclosure would rest solely with the advertiser, not with any broadcaster, other media platform, or carrier disseminating the advertisement or communication.

Background

The bill was introduced by Representatives Proctor and V. Miller.

House Committee on Elections

In the House Committee hearing, Representative V. Miller and a representative of the Office of the Secretary of State provided **proponent** testimony, stating the bill would limit the misuse of AI in elections and mitigate and prevent the practice of using AI to deceive or mislead the public.

Written-only proponent testimony was provided by representatives of the Kansas County Clerks and Election Officials Association and the Kansas District Court Judges Association.

Neutral testimony was provided by representatives of the Kansas Association of Broadcasters and National Conference of State Legislatures (NCSL). The NCSL representatives provided an overview of legislation introduced and enacted in other states on this topic. The representative of the Kansas Association of Broadcasters suggested an amendment to clarify an advertiser would be liable for actions

prohibited under the bill rather than the broadcaster, publisher, or carrier.

Written-only neutral testimony was provided by representatives of the Kansas Press Association and TechNet.

No other testimony was provided.

The House Committee amended the bill to specify the responsibility for including the required disclosure in advertisements and communications and any liability for failure to include such disclosure would rest solely with the advertiser, and a broadcaster, other media platform, or carrier disseminating the advertisement or communication would not be responsible or liable.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the KGEC indicates enactment of the bill could result in additional investigatory and analytical expenses which would depend on the number of violations but is unable to estimate the effect.

The Office of the Secretary of State indicates enactment of the bill would not have a fiscal effect.

The Office of Judicial Administration indicates enactment of the bill could increase the number of cases filed in the district courts because the bill would expand the crime of corrupt political advertising. The provisions of the bill would increase time spent by the district court judicial and nonjudicial personnel in processing, researching, and hearing cases. Because this crime would carry a misdemeanor penalty, there could also be additional supervision of offenders by court services officers. Enactment of the bill could increase the collection of docket fees, fines, and supervision fees that would be deposited into the State

General Fund. The agency indicates that it is unable to estimate a fiscal effect.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2025 Governor's Budget Report*.

The Kansas Association of Counties indicates enactment of the bill would have a fiscal effect on counties if widespread violations or alleged violations create a need for more actions but it is unable to estimate the effect.

Elections; Campaign Finance Act; corrupt political advertising; synthetic media; generative artificial intelligence; election campaign communication; candidate; elected state official; appointed state official; Kansas Governmental Ethics Commission