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BILL ANALYSIS

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House Bill 5141 (Substitute H-2 as passed by the House)
House Bill 5142 and 5143 (as passed by the House)
Sponsor: Representative Penelope Tsernoglou (H.B. 5141)
              Representative Ranjeev Puri (H.B. 5142)
              Representative Matt Bierlein (H.B. 5143)
House Committee: Elections
Senate Committee: Elections and Ethics

Date Completed: 11-8-23

CONTENT

House Bill 5143 would amend the Michigan Campaign Finance Act to define "artificial intelligence".

House Bill 5141 (H-2) would amend the Michigan Campaign Finance Act to do the following:

-- Require political advertisements generated in whole or substantially with the use of artificial intelligence by a candidate or committee to include a statement that the advertisement was generated by artificial intelligence.
-- Prescribe requirements for this statement based on the medium of the advertisement.
-- Require a communication generated in whole or substantially with the use of artificial intelligence to include a disclaimer that the bill would prescribe.
-- Prescribe civil infraction, misdemeanor, and felony penalties for violations of the bill.

House Bill 5142 would add sentencing guidelines to the Code of Criminal Procedure for the felony penalty proposed in **House Bill 5141 (H-2)**. A third or subsequent offense for failing to disclose the use of artificial intelligence in a political advertisement would be a Class G violation against the Public Trust, punishable by up to two years imprisonment.

House Bill 5141 is tie-barred to House Bill 5143. House Bills 5142 and 5143 are tie-barred to House Bill 5141. House Bills 5141 (H-2) and 5143 are described in greater detail below.

House Bill 5143

The bill would define "artificial intelligence" as a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments.

House Bill 5141 (H-2)

Disclaimers for Qualified Political Advertisements

The bill would define "qualified political advertisement" as any advertisement, including search engine marketing, display advertisements, video advertisements, native advertisements,

messaging service advertisements, mobile application advertisements, and sponsorships, involving a candidate for Federal, State, or local office in the State, any election to Federal, State, or local office in the State, or a ballot question, that did the following:

-- Contained any image, audio, or video that is generated in whole or substantially with the use of artificial intelligence.
-- Is made by or on behalf of a candidate or committee.

Under the bill, if a person, committee, or other entity created, published, or originally distributed a qualified political advertisement, the qualified political advertisement would have to include, in a clear and conspicuous manner, a statement specifying that the qualified political advertisement was generated in whole or substantially by artificial intelligence.

If the qualified political advertisement were *a graphic communication*, the statement would have to appear in letters at least as large as most of the text in the graphic communication and would have to be in the same language as the language used. If the qualified political advertisement were *an audio communication*, the statement would have to be spoken in a clearly audible and intelligible manner at the beginning or end of the communication, last at least three seconds, and be in the same language as the language used. If the qualified political advertisement were *a video communication that also included audio*, the statement would have to appear for at least four seconds in letters at least as large as the majority of any text communication, or if there were no other text communication, in a size that was easily readable by the average viewer, be spoken in a clearly audible and intelligible manner at the beginning or end of the communication and last at least three seconds, and be in the same language as the language used in the video communication.

Each qualified political advertisement that was distributed or aired to the public that violated these requirements would be a separate violation. A person that violated these requirements would be guilty of the following:

-- For a first violation, a misdemeanor punishable by up to 93 days' imprisonment or a maximum fine of $1,000, or both.
-- For a second violation, a misdemeanor punishable by up to 93 days' imprisonment or a maximum fine of $1,500, or both.
-- For a third or subsequent violation, a felony punishable by up to two years' imprisonment or a maximum fine of $2,000, or both.

Other Disclaimers

If a person, committee, or other entity created, published, or originally distributed a pictorial, audio, or video communication that was generated in whole or substantially by artificial intelligence, referenced an election, a candidate, or a ballot question, and was *not* a qualified political advertisement, the communication would have to contain the following disclaimer: "This communication was generated in whole or substantially by artificial intelligence.".

A person other than a committee that violated these requirements would be subject to the following:

-- For a first offense, the person would be responsible for a State civil infraction and could be ordered to pay a maximum civil fine of $250 for each violation.
-- For a second or subsequent offense, the person would be guilty of a misdemeanor punishable by up to 93 days' imprisonment or a maximum fine of $1,000, or both.

A committee that violated these requirements would be guilty of a misdemeanor punishable by up to 93 days' imprisonment or a maximum fine of $1,000, or both.

Relief

The Attorney General (AG) or a candidate for office who had been injured or was likely to be injured by a violation of these requirements could apply to any of the following courts for injunctive relief against a person for the violation:

-- The circuit court for the county in which a party to the alleged violative act or practice resided.
-- The circuit court for the county in which the violation could deceive and influence voters in an upcoming election.

Exemptions

Under the bill, these requirements would not apply to any of the following:

-- A radio or television broadcasting station, including a cable or satellite television operator, programmer, or producer, that broadcast a qualified political advertisement or a communication generated in whole or substantially by artificial intelligence as part of a bona fide newscast, news interview, news documentary, or on-the-spot coverage of bona fide news events, if the broadcast clearly acknowledged through content or a disclosure, in a manner that could be easily heard or read by the average listener or viewer, that the qualified political advertisement or communication generated in whole or substantially by artificial intelligence did not accurately represent the speech or conduct of the depicted individual.
-- A radio or television broadcasting station, including a cable or satellite television operator, programmer, or producer, when the station was paid to broadcast qualified political advertisements.
-- A distribution platform, including a website or a regularly published newspaper, magazine, or other periodical of general circulation, including an internet or electronic publication, that routinely carried news and commentary of general interest and that published prohibited qualified political advertisements, if the distribution platform had a clearly stated written policy, provided to any person, committee, or other entity that created, sought to publish, or originally distributed a qualified political advertisement, that the qualified political advertisement had to include a statement consistent with the bill's requirements.
-- A qualified political advertisement that constituted satire or parody.

A distribution platform would not be liable for the lack of disclosure content created in whole or substantially by artificial intelligence in a qualified political advertisement or prerecorded telephone message if the distribution platform could show that the distribution platform provided notice of its prohibitions related to a lack of disclosure of content created in whole or substantially by artificial intelligence in a qualified political advertisement or prerecorded telephone message.

Prerecorded Telephone Disclaimer

Among other things, the Michigan Campaign Finance Act prescribes disclosure requirements for printed matter, radio, and television paid advertisement that reference an election, candidate, or ballot question. For example, a prerecorded telephone message that advocates the election or defeat of a clearly identified candidate, or the qualification, passage, or defeat

of a ballot question, must bear an identification that contains the name and telephone number, address, or other contact information of the person paying for the prerecorded telephone message.

Under the bill, if a prerecorded telephone message was generated in whole or substantially by artificial intelligence, the prerecorded telephone message would have to contain the following disclaimer: "This message was generated in whole or substantially by artificial intelligence.".

MCL 169.247 et al. (H.B. 5141)   Legislative Analyst: Abby Schneider
    777.11e (H.B. 5142)
    169.202 (H.B. 5143)

FISCAL IMPACT

House Bill 5143 would have no fiscal impact on State or local government.

The criminal penalties in House Bill 5141 (H-2) could have a negative fiscal impact on the State and local government. Violations of the proposed Act would be punishable as misdemeanors and felonies of different severity. More misdemeanor and felony arrests and convictions could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. Misdemeanor convictions could increase county jail and local probation supervision costs, which vary by jurisdiction and thus indeterminate.

Based on 2022 data, the average cost to State government for felony probation supervision is approximately $4,800 per probationer per year. For any increase in prison intakes the average annual cost of housing a prisoner in a State correctional facility is an estimated $45,700. Per diem rates for housing a prisoner in a state correctional facility range from a low of $98 to a high of $192 per day, depending on the security level of the facility. Additionally, any associated fine revenue would increase funding to local public libraries and county law libraries.

The bill could have a positive fiscal impact on the State and local units of government. The bill also would impose a civil fine. Revenue collected from civil fines is used to support local public libraries and county law libraries. Additionally, $10 of the civil fine would be deposited into the State Justice System Fund. This Fund supports justice-related activities across state government in the Departments of Corrections, Health and Human Services, State Police, and Treasury. The Fund also supports justice-related issues in the Legislative Retirement System and the Judiciary. The amount of revenue to the State or for local libraries is indeterminate and dependent on the actual number of violations.

House Bill 5142 would have no fiscal impact on local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge*, in which the Court ruled that the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

Overall, the bills would have an indeterminate fiscal impact on local court systems. Any impact would depend on the bills' impact on caseloads, administrative costs, and criminal fine revenue, which is constitutionally dedicated to county libraries.

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