

Calendar No. 389118TH CONGRESS
2^D SESSION**S. 3875**

To amend the Federal Election Campaign Act of 1971 to provide further transparency for the use of content that is substantially generated by artificial intelligence in political advertisements by requiring such advertisements to include a statement within the contents of the advertisements if generative AI was used to generate any image, audio, or video footage in the advertisements, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 6, 2024

Ms. KLOBUCHAR (for herself and Ms. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

MAY 15, 2024

Reported by Ms. KLOBUCHAR, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

A BILL

To amend the Federal Election Campaign Act of 1971 to provide further transparency for the use of content that is substantially generated by artificial intelligence in political advertisements by requiring such advertisements to include a statement within the contents of the advertisements if generative AI was used to generate any image, audio, or video footage in the advertisements, and for other purposes.

1 “(I) expressly advocates for or
2 against the nomination or election of
3 a candidate;

4 “(II) refers to a candidate at any
5 time during the period beginning 120
6 days before the date of a primary
7 election or nominating caucus or con-
8 vention and ending on the date on
9 which a general election occurs; or

10 “(III) solicits a contribution for a
11 candidate or political committee or
12 any other person who makes disburse-
13 ments for communications described
14 in subclause (I) or (II).

15 “(ii) VOICE AND LIKENESS.—A com-
16 munication that invokes the likeness or
17 voice of a candidate shall be treated as a
18 communication that refers to such can-
19 didate.

20 “(B) GENERATIVE ARTIFICIAL INTEL-
21 LIGENCE.—The term ‘generative artificial intel-
22 ligence’ means artificial intelligence technology
23 that uses machine learning (including deep-
24 learning models, natural language processing,
25 or other computational processing techniques of

1 similar or greater complexity) to generate text,
2 images, audio, video, or other media.

3 “(C) SUBSTANTIALLY GENERATED BY AR-
4 TIFICIAL INTELLIGENCE.—

5 “(i) IN GENERAL.—The term ‘sub-
6 stantially generated by artificial intel-
7 ligence’ means an image, audio, or video
8 that was created or materially altered
9 using generative artificial intelligence.

10 “(ii) EXCEPTION.—Such term does
11 not include an image, audio, or video
12 that—

13 “(I) has only minor alterations
14 by generative artificial intelligence (in-
15 cluding cosmetic adjustments, color
16 editing, cropping, resizing, and other
17 immaterial uses); and

18 “(II) does not create a fun-
19 damentally different understanding
20 than a reasonable person would have
21 from an unaltered version of the
22 media.

23 “(2) REQUIREMENT.—If a covered communica-
24 tion contains an image, audio, or video that was sub-
25 stantially generated by artificial intelligence, the cov-

1 ered communication shall include, in a clear and
2 conspicuous manner, a statement that the covered
3 communication contains such an image, audio, or
4 video.

5 “(3) SAFE HARBOR FOR DETERMINING CLEAR
6 AND CONSPICUOUS MANNER.—A statement required
7 under this subsection shall be considered to be made
8 in a clear and conspicuous manner if the statement
9 meets the following requirements:

10 “(A) IMAGE COVERED COMMUNICA-
11 TIONS.—In the case of an image that is a cov-
12 ered communication, the statement—

13 “(i) appears in letters at least as large
14 as the majority of the text in the covered
15 communication or otherwise meets the re-
16 quirements under subsection (c)(1);

17 “(ii) meets the requirements of para-
18 graphs (2) and (3) of subsection (c);

19 “(iii) states that the covered commu-
20 nication was created or materially altered
21 by artificial intelligence; and

22 “(iv) is permanently affixed to the
23 covered communication.

1 “(B) AUDIO COVERED COMMUNICA-
2 TIONS.—In the case of an audio covered com-
3 munication, the statement—

4 “(i) is spoken in a clearly audible and
5 intelligible manner at the beginning or end
6 of the covered communication and lasts not
7 fewer than 4 seconds; and

8 “(ii) includes the following audio
9 statement in a clearly spoken manner:

10 ‘_____ used artificial
11 intelligence to generate the contents of this
12 communication.’ (with the blank filled in
13 with the name of person who made the dis-
14 bursement to pay for such covered commu-
15 nication).

16 “(C) VIDEO COVERED COMMUNICA-
17 TIONS.—In the case of a video covered commu-
18 nication that also includes audio, the statement
19 is made both in—

20 “(i) a written format that meets the
21 requirements of subparagraph (A) and ap-
22 pears throughout the length of the video
23 covered communication; and

24 “(ii) an audible format that meets the
25 requirements of subparagraph (B).”.

1 (b) ENFORCEMENT.—

2 (1) IN GENERAL.—Section 309(a)(4)(C)(i) of
3 the Federal Election Campaign Act of 1971 (52
4 U.S.C. 30109(a)(4)(C)(i)) is amended—

5 (A) in the matter before subclause (I), by
6 inserting “or a qualified disclaimer require-
7 ment” after “a qualified disclosure require-
8 ment”; and

9 (B) in subclause (II)—

10 (i) by striking “a civil money penalty
11 in an amount determined, for violations of
12 each qualified disclosure requirement” and
13 inserting “a civil money penalty—

14 “(aa) for violations of each quali-
15 fied disclosure requirement, in an
16 amount determined”;

17 (ii) by striking the period at the end
18 and inserting “; and”; and

19 (iii) by adding at the end the fol-
20 lowing new item:

21 “(bb) for violations of each quali-
22 fied disclaimer requirement, in an
23 amount which is determined under a
24 schedule of penalties which is estab-
25 lished and published by the Commis-

1 sion and which takes into account the
 2 existence of previous violations by the
 3 person and how broadly the commu-
 4 nication is distributed and such other
 5 factors as the Commission considers
 6 appropriate, provided that any such
 7 civil penalty shall not exceed \$50,000
 8 per covered communication.”.

9 ~~(2) FAILURE TO RESPOND.~~—Section
 10 ~~309(a)(4)(C)(ii)~~ of such Act (~~52~~ U.S.C.
 11 ~~30109(a)(4)(C)(ii)~~) is amended by striking the pe-
 12 riod at the end and inserting “, except that in the
 13 case of a violation of a qualified disclaimer require-
 14 ment, failure to timely respond after the Commission
 15 has notified the person of an alleged violation under
 16 subsection (a)(1) shall constitute the person’s admis-
 17 sion of the factual allegations of the complaint.”.

18 ~~(3) QUALIFIED DISCLAIMER REQUIREMENT DE-~~
 19 ~~FINED.~~—Section ~~309(a)(4)(C)~~ of such Act (~~52~~
 20 U.S.C. ~~30109(a)(4)(C)~~) is amended by redesignating
 21 clause (v) as clause (vi) and by inserting after clause
 22 (iv) the following new clause:

23 “(v) In this subparagraph, the term ‘quali-
 24 fied disclaimer requirement’ means the require-
 25 ment of section ~~318(c)(2)~~.”.

1 (4) APPLICATION.—Clause (vi) of section
 2 309(a)(4)(C) of such Act (52 U.S.C.
 3 30109(a)(4)(C)), as redesignated by paragraph (3),
 4 is amended—

5 (A) by striking “shall apply with respect to
 6 violations” and inserting “shall apply—

7 “(I) with respect to violations of
 8 qualified disclosure requirements”;

9 (B) by striking the period at the end and
 10 inserting “; and”; and

11 (C) by adding at the end the following new
 12 subclause:

13 “(H) with respect to violations of
 14 qualified disclaimer requirements oc-
 15 curring on or after the date of the en-
 16 actment of the AI Transparency in
 17 Elections Act of 2024.”.

18 (5) TIME OF JUDICIAL REVIEW.—Section
 19 309(a)(8)(A) of the Federal Election Campaign Act
 20 of 1971 (52 U.S.C. 30109(a)(8)(A)) is amended by
 21 inserting “(45-day period in the case of any com-
 22 plaint alleging a violation of section 318(e)(2))”
 23 after “120-day period”.

24 (c) REGULATIONS.—Not later than 90 days after the
 25 date of enactment of the AI Transparency in Elections

1 Act of 2024, the Federal Election Commission shall, in
2 consultation with the Director of the National Institute
3 of Standards and Technology, promulgate a regulation to
4 carry out the amendments made by subsections (a) and
5 (b), including—

6 (1) criteria for determining whether a covered
7 communication (as defined in section 318(e) of the
8 Federal Election Campaign Act of 1971, as added
9 by subsection (a)) contains an image, audio, or video
10 substantially generated by artificial intelligence (as
11 defined in such section); and

12 (2) requirements for the contents of the state-
13 ment required under section 318(e)(2) of the Fed-
14 eral Election Campaign Act of 1971, as added by
15 subsection (a).

16 (d) EFFECTIVE DATE.—The amendments made by
17 this section shall—

18 (1) apply with respect to any communication
19 made after the date of enactment of this Act; and

20 (2) take effect without regard to whether the
21 Federal Election Commission has promulgated regu-
22 lations to carry out such amendments.

23 **SEC. 3. REPORTS.**

24 Not later than 2 years after the date of enactment
25 of this Act, and biannually thereafter, the Federal Elec-

1 tion Commission shall submit a report to the Committee
2 on Rules and Administration of the Senate and the Com-
3 mittee on House Administration of the House of Rep-
4 resentatives that includes—

5 (1) an assessment of the compliance with and
6 the enforcement of the requirements of subsection
7 (e) of section 318 of the Federal Election Campaign
8 Act of 1971, as added by this Act; and

9 (2) recommendations for any modifications to
10 that subsection to assist in carrying out the pur-
11 poses of that subsection.

12 **SEC. 4. SEVERABILITY.**

13 If any provision of this Act or any amendment made
14 by this Act, or the application of any such provision or
15 amendment to any person or circumstance, is held to be
16 unconstitutional, the remainder of this Act, and the appli-
17 cation of such provision or amendment to any other person
18 or circumstance, shall not be affected by the holding.

19 **SECTION 1. SHORT TITLE.**

20 *This Act may be cited as the “AI Transparency in*
21 *Elections Act of 2024”.*

1 **SEC. 2. REQUIRING DISCLAIMERS ON ADVERTISEMENTS**
 2 **CONTAINING CONTENT SUBSTANTIALLY GEN-**
 3 **ERATED BY ARTIFICIAL INTELLIGENCE.**

4 (a) *REQUIREMENT.*—Section 318 of the Federal Elec-
 5 tion Campaign Act of 1971 (52 U.S.C. 30120) is amended
 6 by adding at the end the following new subsection:

7 “(e) *SPECIAL DISCLAIMER FOR COVERED COMMUNICA-*
 8 *TIONS CONTAINING CONTENT SUBSTANTIALLY GENERATED*
 9 *BY ARTIFICIAL INTELLIGENCE.*—

10 “(1) *DEFINITIONS.*—For purposes of this sub-
 11 section:

12 “(A) *COVERED COMMUNICATION.*—

13 “(i) *IN GENERAL.*—The term ‘covered
 14 communication’ means a communication
 15 through any broadcasting station, news-
 16 paper, magazine, outdoor advertising facil-
 17 ity, mailing, telephone bank, internet or
 18 other digital medium, or any other type of
 19 general public political advertising that—

20 “(I) expressly advocates for or
 21 against the nomination or election of a
 22 candidate;

23 “(II) refers to a candidate at any
 24 time during the period beginning 120
 25 days before the date of a primary elec-
 26 tion or nominating caucus or conven-

1 *tion and ending on the date on which*
2 *a general election occurs; or*

3 *“(III) solicits a contribution for a*
4 *candidate or political committee or*
5 *any other person who makes disburse-*
6 *ments for communications described in*
7 *subclause (I) or (II).*

8 *“(ii) VOICE AND LIKENESS.—A com-*
9 *munication that invokes the likeness or*
10 *voice of a candidate shall be treated as a*
11 *communication that refers to such can-*
12 *didate.*

13 *“(B) GENERATIVE ARTIFICIAL INTEL-*
14 *LIGENCE.—The term ‘generative artificial intel-*
15 *ligence’ means artificial intelligence technology*
16 *that uses machine learning (including deep-*
17 *learning models, natural language processing, or*
18 *other computational processing techniques of*
19 *similar or greater complexity) to generate text,*
20 *images, audio, video, or other media.*

21 *“(C) SUBSTANTIALLY GENERATED BY ARTI-*
22 *FICIAL INTELLIGENCE.—*

23 *“(i) IN GENERAL.—The term ‘substan-*
24 *tially generated by artificial intelligence’*
25 *means an image, audio, or video that was*

1 *created or materially altered using genera-*
2 *tive artificial intelligence.*

3 “(ii) *EXCEPTION.*—*Such term does not*
4 *include an image, audio, or video that—*

5 “(I) *has only minor alterations by*
6 *generative artificial intelligence (in-*
7 *cluding cosmetic adjustments, color ed-*
8 *iting, cropping, resizing, and other im-*
9 *material uses); and*

10 “(II) *does not create a fundamen-*
11 *tally different understanding than a*
12 *reasonable person would have from an*
13 *unaltered version of the media.*

14 “(2) *REQUIREMENT.*—*When a person makes a*
15 *disbursement for the purpose of financing a covered*
16 *communication containing an image, audio, or video*
17 *that was substantially generated by artificial intel-*
18 *ligence, the covered communication shall include, in*
19 *a clear and conspicuous manner, a statement that the*
20 *covered communication contains such an image,*
21 *audio, or video.*

22 “(3) *SAFE HARBOR FOR DETERMINING CLEAR*
23 *AND CONSPICUOUS MANNER.*—*A statement required*
24 *under this subsection shall be considered to be made*

1 *in a clear and conspicuous manner if the statement*
2 *meets the following requirements:*

3 “(A) *IMAGE COVERED COMMUNICATIONS.—*

4 *In the case of an image that is a covered commu-*
5 *nication, the statement—*

6 “(i) *appears in letters at least as large*
7 *as the majority of the text in the covered*
8 *communication or otherwise meets the re-*
9 *quirements under subsection (c)(1);*

10 “(ii) *meets the requirements of para-*
11 *graphs (2) and (3) of subsection (c);*

12 “(iii) *states that the covered commu-*
13 *nication was created or materially altered*
14 *by artificial intelligence; and*

15 “(iv) *is permanently affixed to the cov-*
16 *ered communication.*

17 “(B) *AUDIO COVERED COMMUNICATIONS.—*

18 *In the case of an audio covered communication,*
19 *the statement—*

20 “(i) *is spoken in a clearly audible and*
21 *intelligible manner at the beginning or end*
22 *of the covered communication and lasts not*
23 *fewer than 4 seconds; and*

24 “(ii) *includes the following audio state-*
25 *ment in a clearly spoken manner:*

1 ‘ _____ used artificial
 2 intelligence to generate the contents of this
 3 communication.’ (with the blank filled in
 4 with the name of person who made the dis-
 5 bursement to pay for such covered commu-
 6 nication).

7 “(C) VIDEO COVERED COMMUNICATIONS.—
 8 In the case of a video covered communication
 9 that also includes audio, the statement is made
 10 both in—

11 “(i) a written format that meets the re-
 12 quirements of subparagraph (A) and ap-
 13 pears throughout the length of the video cov-
 14 ered communication; and

15 “(ii) an audible format that meets the
 16 requirements of subparagraph (B).”.

17 (b) ENFORCEMENT.—

18 (1) IN GENERAL.—Section 309(a)(4)(C)(i) of the
 19 Federal Election Campaign Act of 1971 (52 U.S.C.
 20 30109(a)(4)(C)(i)) is amended—

21 (A) in the matter before subclause (I), by
 22 inserting “or a qualified disclaimer require-
 23 ment” after “a qualified disclosure requirement”;
 24 and

25 (B) in subclause (II)—

1 (i) by striking “a civil money penalty
2 in an amount determined, for violations of
3 each qualified disclosure requirement” and
4 inserting “a civil money penalty—

5 “(aa) for violations of each quali-
6 fied disclosure requirement, in an
7 amount determined”;

8 (ii) by striking the period at the end
9 and inserting “; and”; and

10 (iii) by adding at the end the following
11 new item:

12 “(bb) for violations of each quali-
13 fied disclaimer requirement, in an
14 amount which is determined under a
15 schedule of penalties which is estab-
16 lished and published by the Commis-
17 sion and which takes into account the
18 existence of previous violations by the
19 person and how broadly the commu-
20 nication is distributed and such other
21 factors as the Commission considers
22 appropriate, provided that any such
23 civil penalty shall not exceed \$50,000
24 per covered communication.”.

1 (2) *FAILURE TO RESPOND.*—Section
 2 309(a)(4)(C)(ii) of such Act (52 U.S.C.
 3 30109(a)(4)(C)(ii)) is amended by striking the period
 4 at the end and inserting “, except that in the case of
 5 a violation of a qualified disclaimer requirement, fail-
 6 ure to timely respond after the Commission has noti-
 7 fied the person of an alleged violation under sub-
 8 section (a)(1) shall constitute the person’s admission
 9 of the factual allegations of the complaint.”.

10 (3) *QUALIFIED DISCLAIMER REQUIREMENT DE-*
 11 *FINED.*—Section 309(a)(4)(C) of such Act (52 U.S.C.
 12 30109(a)(4)(C)) is amended by redesignating clause
 13 (v) as clause (vi) and by inserting after clause (iv)
 14 the following new clause:

15 “(v) In this subparagraph, the term ‘quali-
 16 fied disclaimer requirement’ means the require-
 17 ment of section 318(e)(2).”.

18 (4) *APPLICATION.*—Clause (vi) of section
 19 309(a)(4)(C) of such Act (52 U.S.C. 30109(a)(4)(C)),
 20 as redesignated by paragraph (3), is amended—

21 (A) by striking “shall apply with respect to
 22 violations” and inserting “shall apply—

23 “(I) with respect to violations of
 24 qualified disclosure requirements”;

1 (B) by striking the period at the end and
2 inserting “; and”; and

3 (C) by adding at the end the following new
4 subclause:

5 “(II) with respect to violations of
6 qualified disclaimer requirements oc-
7 curring on or after the date of the en-
8 actment of the AI Transparency in
9 Elections Act of 2024.”.

10 (5) *TIME OF JUDICIAL REVIEW.*—Section
11 309(a)(8)(A) of the Federal Election Campaign Act of
12 1971 (52 U.S.C. 30109(a)(8)(A)) is amended by in-
13 serting “(45-day period in the case of any complaint
14 alleging a violation of section 318(e)(2))” after “120-
15 day period”.

16 (c) *REGULATIONS.*—Not later than 90 days after the
17 date of enactment of the AI Transparency in Elections Act
18 of 2024, the Federal Election Commission shall, in con-
19 sultation with the Director of the National Institute of
20 Standards and Technology, promulgate a regulation to
21 carry out the amendments made by subsections (a) and (b),
22 including—

23 (1) criteria for determining whether a covered
24 communication (as defined in section 318(e) of the
25 Federal Election Campaign Act of 1971, as added by

1 *subsection (a)) contains an image, audio, or video*
2 *substantially generated by artificial intelligence (as*
3 *defined in such section); and*

4 *(2) requirements for the contents of the statement*
5 *required under section 318(e)(2) of the Federal Elec-*
6 *tion Campaign Act of 1971, as added by subsection*
7 *(a).*

8 *(d) EFFECTIVE DATE.—The amendments made by this*
9 *section shall—*

10 *(1) apply with respect to any communication*
11 *made after the date of enactment of this Act; and*

12 *(2) take effect without regard to whether the Fed-*
13 *eral Election Commission has promulgated regula-*
14 *tions to carry out such amendments.*

15 **SEC. 3. REPORTS.**

16 *Not later than 2 years after the date of enactment of*
17 *this Act, and biannually thereafter, the Federal Election*
18 *Commission shall submit a report to the Committee on*
19 *Rules and Administration of the Senate and the Committee*
20 *on House Administration of the House of Representatives*
21 *that includes—*

22 *(1) an assessment of the compliance with and the*
23 *enforcement of the requirements of subsection (e) of*
24 *section 318 of the Federal Election Campaign Act of*
25 *1971, as added by this Act; and*

1 (2) *recommendations for any modifications to*
2 *that subsection to assist in carrying out the purposes*
3 *of that subsection.*

4 **SEC. 4. SEVERABILITY.**

5 *If any provision of this Act or any amendment made*
6 *by this Act, or the application of any such provision or*
7 *amendment to any person or circumstance, is held to be*
8 *unconstitutional, the remainder of this Act, and the appli-*
9 *cation of such provision or amendment to any other person*
10 *or circumstance, shall not be affected by the holding.*

Calendar No. 389

118TH CONGRESS
2^D SESSION
S. 3875

A BILL

To amend the Federal Election Campaign Act of 1971 to provide further transparency for the use of content that is substantially generated by artificial intelligence in political advertisements by requiring such advertisements to include a statement within the contents of the advertisements if generative AI was used to generate any image, audio, or video footage in the advertisements, and for other purposes.

MAY 15, 2024

Reported with an amendment