

Department of Legislative Services  
 Maryland General Assembly  
 2024 Session

FISCAL AND POLICY NOTE  
 Third Reader - Revised

Senate Bill 978

(Senator Hester)

Education, Energy, and the Environment

Ways and Means

Election Law - Synthetic Media - Disclosure and Regulation

This bill requires specified persons that publish, distribute, or disseminate “synthetic media” to (1) publish the original content that was manipulated to generate the synthetic media on the person’s website and (2) make a specified disclosure regarding the synthetic media. The bill authorizes the State Board of Elections (SBE) to seek to enjoin the publication, distribution, or dissemination of synthetic media related to elections by a person who violates the requirements of the bill and establishes criminal penalties for violations of the bill. **The bill takes effect June 1, 2024.**

Fiscal Summary

**State Effect:** No effect in FY 2024. General fund expenditures increase by \$208,700 in FY 2025; future years reflect annualization and inflation. Revenues are not expected to be materially affected.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	208,700	190,700	199,100	207,900	217,000
Net Effect	(\$208,700)	(\$190,700)	(\$199,100)	(\$207,900)	(\$217,000)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** The bill is not anticipated to materially affect local government finances.

**Small Business Effect:** None.

## Analysis

### Bill Summary:

#### *Definitions*

“Synthetic media” means an image, an audio recording, or a video recording that has been intentionally created or manipulated with the use of generative artificial intelligence or other digital technology to create a realistic but false image, audio recording, or video recording that attempts to influence the casting of a vote or a decision to vote by (1) purporting to depict a real, clearly identified candidate or the speech or conduct of the candidate or (2) producing a fundamentally different understanding or impression of an individual’s appearance, speech, or conduct than a reasonable individual would have from the unaltered, original version of the image, audio recording, or video recording.

#### *Applicability*

The bill applies only to a candidate, a campaign finance entity, a person that makes independent expenditures or disbursements for electioneering communications in an amount that requires them to register with SBE, a participating organization that makes political disbursements in an amount that requires them to register with SBE, or an agent of those persons/entities.

The bill does not apply to (1) a news story, a commentary, or an editorial disseminated by a broadcasting station, including a cable television operator, programmer, or producer, or satellite television or radio provider, website, newspaper, magazine, or other periodical publication, including any Internet or electronic publication, that is not controlled by a candidate or political party or (2) synthetic media that is satire or parody.

#### *Publication of Original Material and Disclosure of Synthetic Media*

A person that publishes, distributes, or disseminates synthetic media, or causes synthetic media to be published, distributed, or disseminated must (1) publish the original content that was manipulated to generate the synthetic media on the website of the person and (2) make a specified disclosure of the synthetic media (described below) in addition to existing campaign material requirements.

#### *Disclosure Requirements*

For a still image, the disclosure must include the statement “This image has been altered or modified through the use of computer programs to display an event or image that did

not occur in reality.” The statement must be written in a type size that is easily readable by the average viewer.

For media that is only an audio recording, the disclosure must include the statement “This audio has been altered or modified through the use of computer programs to display a sound that did not occur in reality.” The statement must be read (1) in a clearly spoken manner at a pitch and speed that can easily be heard by the average listener and (2) at the beginning and end of the audio recording, and for audio recordings of two minutes or longer, interspaced throughout at intervals of not more than two minutes.

For a video recording, the disclosure must include the statement “This video has been altered or modified through the use of computer programs to display an event, a sound, or an image that did not occur in reality.” The statement must be written in (1) text that remains visible to the viewer for the duration of the video recording and (2) a type size that is easily readable to the average viewer and placed in a conspicuous location in the frame of the video.

#### *Authorization for the State Board of Elections to Seek an Injunction*

SBE may seek to enjoin the publication, distribution, or dissemination of synthetic media related to elections by a person who violates the requirements of the bill.

#### *Criminal Penalties*

The bill prohibits a person from publishing, distributing, or disseminating, or causing to be published, distributed, or disseminated, campaign material in violation of the bill’s requirements. A person who violates the prohibition is guilty of a misdemeanor and is (1) subject to a fine of up to \$1,000 and/or imprisonment for up to one year and (2) is ineligible to hold any public or party office for four years after the date of the offense.

#### **Current Law:**

##### *Campaign Material*

“Campaign material” means any material that (1) contains text, graphics, or other images; (2) relates to a candidate, a prospective candidate, or the approval or rejection of a question or prospective question; and (3) is published, distributed, or disseminated. “Campaign material” includes (1) a qualifying paid digital communication; (2) any other material transmitted by or appearing on the Internet or other electronic medium; and (3) an oral commercial campaign advertisement.

Each item of campaign material generally must contain an authority line that states (1) as to campaign material published, distributed, or disseminated by a campaign finance entity, the name and address of the treasurer of each campaign finance entity responsible for the campaign material and the name of each campaign finance entity for which each treasurer is acting and (2) as to campaign material published, distributed, or disseminated by any other person, the name and address of the person responsible for the campaign material. The authority line may omit an address that is on file with SBE or a local board.

Campaign material that is published or distributed in support of or in opposition to a candidate, but is not authorized by the candidate, must include the statement “This message has been authorized and paid for by (name of payor or any organization affiliated with the payor), (name and title of treasurer or president). This message has not been authorized or approved by any candidate.”

SBE is authorized to impose a civil penalty of up to \$1,000 for a failure to include an authority line on campaign material. A person who violates the authority line requirements is also guilty of a misdemeanor and (1) subject to a fine of up to \$1,000 and/or imprisonment for up to one year and (2) ineligible to hold any public or party office for four years after the date of the offense.

#### *Artificial Intelligence-generated Audio or Visual Media*

Maryland law regulating political advertising (campaign material) does not explicitly address the use of artificial intelligence-generated audio or visual media. However, SBE adopted regulations in 2022 that require a campaign that uses a “deep fake” in campaign material to clearly indicate before and after the deep fake content that the content does not reflect a true recording of an action, sound, or image that occurred in reality. “Deep fake” is defined as an audio or video recording that appears to constitute a true recording of an action, sound, a vocalization, or an image, but (1) did not occur in the manner presented by the recording in reality and (2) was generated with the assistance of computer software to create apparently authentic images, vocalizations, or recordings.

#### *Campaign Finance Entities*

Unless otherwise expressly authorized by law, all campaign finance activity for an election under the Election Law Article must be conducted through a campaign finance entity (defined as a political committee established under Title 13 of the Election Law Article). An individual may not file a certificate of candidacy or a declaration of intent until the individual establishes, or causes to be established, an authorized candidate campaign committee (a campaign finance entity authorized by the candidate to promote the candidate’s candidacy). “Political committee” is defined as a combination of two or more individuals that has as its major purpose promoting the success or defeat of a candidate, political party, question, or prospective question submitted to a vote at any election.

For each election in which a campaign finance entity participates, it generally must file campaign finance reports at various times prior to and after the primary and general elections, as well as an annual report. The reports must contain information required by SBE with respect to all contributions received and all expenditures made by or on behalf of the campaign finance entity during a reporting period.

Subject to certain exceptions, a person may not make aggregate contributions of more than \$6,000 to any one campaign finance entity in a four-year election cycle, and a campaign finance entity may not make transfers in a cumulative amount of more than \$6,000 to any one other campaign finance entity in a four-year election cycle.

### *Independent Expenditures and Electioneering Communications*

Independent expenditures in general – political spending by individuals or organizations without coordination with a candidate – cannot be limited or prohibited, pursuant to the 2010 Supreme Court decision *Citizens United v. FEC*. Requirements for disclosure of independent expenditures, however, have been upheld by courts. Under Maryland’s disclosure requirements, independent expenditures are expenditures for public communications that are not made in coordination with a candidate or campaign finance entity and that expressly advocate the success or defeat of a clearly identified candidate or ballot question. Electioneering communications, on the other hand, do not expressly advocate the success or defeat of a candidate or ballot question, but refer to a clearly identified candidate or ballot question, are made within 60 days of an election, are capable of being received by a certain amount of individuals (with the amount depending on the type of communication) in the constituency where the candidate or ballot question is on the ballot, and are not made in coordination with a candidate or campaign finance entity.

Within 48 hours after a person makes aggregate independent expenditures or disbursements for electioneering communications of \$5,000 or more in an election cycle, the person must file a registration form with SBE. Within 48 hours after a day on which a person makes aggregate independent expenditures or disbursements for electioneering communications of \$10,000 or more in an election cycle, the person must file a report with SBE providing information on the person, the expenditures or disbursements, and persons who made cumulative donations of \$6,000 or more to the person during the period covered by the report. Further, a person who files an independent expenditure or electioneering communication report must file an additional report within 48 hours after a day on which the person makes aggregate independent expenditures or disbursements for electioneering communications of \$10,000 or more following the closing date of the person’s previous report.

### *Participating Organizations*

A “participating organization” is an entity that is organized under § 501(c)(4) or (6) or § 527 of the Internal Revenue Code and makes political disbursements (contributions to a campaign finance entity, disbursements to persons making independent expenditures or disbursements for electioneering communications in the State, or disbursements to out-of-state political committees that make a disbursement in the State).

Participating organizations that make aggregate political disbursements of more than \$6,000 in a four-year election cycle must file a registration form with SBE within 48 hours and are subject to reporting/disclosure requirements after spending \$10,000 or more. The reports filed must include the amount and date of each political disbursement made in the State or to influence a State election and the identity of each person that made cumulative donations of \$10,000 or more to the participating organization.

**State Expenditures:** General fund expenditures increase by \$208,665 in fiscal 2025, which accounts for a 30-day start-up delay from the bill’s June 1, 2024 effective date. This estimate reflects costs for (1) the Office of the State Prosecutor (OSP) to hire one special investigator to conduct forensic computer investigations necessary to enforce the bill’s requirements and (2) SBE to hire one administrator to monitor compliance with the bill’s requirements and seek to enjoin violations of the bill’s requirements. OSP and SBE indicate that existing staff cannot absorb the potential workload that may result from the bill. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2.0
Salaries and Fringe Benefits	\$193,614
Operating Expenses	<u>15,051</u>
<b>Total FY 2025 State Expenditures</b>	<b>\$208,665</b>

Future year expenditures reflect salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

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### **Additional Information**

**Recent Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts); State Prosecutor's Office; Maryland State Board of Elections; Department of Legislative Services

**Fiscal Note History:** First Reader - February 21, 2024  
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