

West's Colorado Revised Statutes Annotated
Title 1. Elections (Refs & Annos)
Election Campaign Regulations
Article 45. Fair Campaign Practices Act (Refs & Annos)

C.R.S.A. § 1-45-101

§ 1-45-101. Short title

Currentness

This article shall be known and may be cited as the “Fair Campaign Practices Act”.

Credits

Repealed and reenacted 1996, Initiated 1996, eff. Jan. 15, 1997.

C. R. S. A. § 1-45-101, CO ST § 1-45-101

Current through the Second Regular and Extraordinary Sessions, 74th General Assembly (2024). Some statute sections may be more current. See credits for details.

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C.R.S.A. § 1-45-102

§ 1-45-102. Legislative declaration

Effective: January 1, 2013

Currentness

The people of the state of Colorado hereby find and declare that large campaign contributions to political candidates allow wealthy contributors and special interest groups to exercise a disproportionate level of influence over the political process; that large campaign contributions create the potential for corruption and the appearance of corruption; that the rising costs of campaigning for political office prevent qualified citizens from running for political office; and that the interests of the public are best served by limiting campaign contributions, establishing campaign spending limits, full and timely disclosure of campaign contributions, and strong enforcement of campaign laws.

Credits

Repealed and reenacted 1996, Initiated 1996, eff. Jan. 15, 1997. Amended by Initiative as Amendment 65, Nov. 6, 2012, and eff. upon proclamation of the governor, Jan. 1, 2013.

C. R. S. A. § 1-45-102, CO ST § 1-45-102

Current through the Second Regular and Extraordinary Sessions, 74th General Assembly (2024). Some statute sections may be more current. See credits for details.

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C.R.S.A. § 1-45-103

§ 1-45-103. Definitions

Effective: June 6, 2023

Currentness

As used in this article 45, unless the context otherwise requires:

- (1) “Appropriate officer” shall have the same meaning as set forth in section 2(1) of article XXVIII of the state constitution.
- (1.3) “Ballot issue” shall have the same meaning as set forth in section 1-1-104(2.3); except that, for purposes of section 1-45-117, “ballot issue” shall mean both a ballot issue as defined in this subsection (1.3) and a ballot question.
- (1.5) “Ballot question” shall have the same meaning as set forth in section 1-1-104(2.7).
- (2) “Candidate” shall have the same meaning as set forth in section 2(2) of article XXVIII of the state constitution.
- (3) “Candidate committee” shall have the same meaning as set forth in section 2(3) of article XXVIII of the state constitution.
- (4) “Candidate committee account” shall mean the account established by a candidate committee with a financial institution pursuant to section 3(9) of article XXVIII of the state constitution.
- (5) “Conduit” shall have the same meaning as set forth in section 2(4) of article XXVIII of the state constitution.
- (6)(a) “Contribution” shall have the same meaning as set forth in section 2(5) of article XXVIII of the state constitution.
 - (b) “Contribution” includes, with regard to a contribution for which the contributor receives compensation or consideration of less than equivalent value to such contribution, including, but not limited to, items of perishable or nonpermanent value, goods, supplies, services, or participation in a campaign-related event, an amount equal to the value in excess of such compensation or consideration as determined by the candidate committee.
 - (c) “Contribution” also includes:

(I) Any payment, loan, pledge, gift, advance of money, or guarantee of a loan made to any political organization;

(II) Any payment made to a third party on behalf of and with the knowledge of the political organization; or

(III) The fair market value of any gift or loan of property made to any political organization.

(d) “Contribution” does not include the payment of legal fees to advise a candidate on compliance with campaign laws or regulations or to represent a candidate or candidate committee in any action in which the candidate or committee has been named as a defendant. Such legal services are not undertaken “for the benefit of any candidate committee” or “for the purpose of promoting the candidate's nomination, retention, recall, or election” as those phrases are used in section 2(5)(a)(II) and (5)(a)(IV) of article XXVIII of the state constitution.

(e) “Contribution” does not include an intervention by the secretary of state, as authorized by section 1-45-111.5(1.5)(g), in any action brought to enforce the provisions of article XXVIII of the state constitution or this article 45.

(7) “Corporation” means a domestic corporation incorporated under and subject to the “Colorado Business Corporation Act”, articles 101 to 117 of title 7, C.R.S., a domestic nonprofit corporation incorporated under and subject to the “Colorado Revised Nonprofit Corporation Act”, articles 121 to 137 of title 7, C.R.S., or any corporation incorporated under and subject to the laws of another state. For purposes of this article, “domestic corporation” shall mean a for-profit or nonprofit corporation incorporated under and subject to the laws of this state, and “nondomestic corporation” shall mean a corporation incorporated under and subject to the laws of another state or foreign country. For purposes of this article, “corporation” includes the parent of a subsidiary corporation or any subsidiaries of the parent, as applicable.

(7.2) “Direct ballot issue or ballot question expenditure” means direct spending in support of or opposition to any single ballot issue or ballot question by a person who does not otherwise meet the requirements of an issue committee. Contributions to an issue committee are not direct ballot issue or ballot question expenditures.

(7.3)(a) “Donation” means:

(I) The payment, loan, pledge, gift, or advance of money, or the guarantee of a loan, made to any person for the purpose of making an independent expenditure;

(II) Any payment made to a third party that relates to, and is made for the benefit of, any person that makes an independent expenditure;

(III) The fair market value of any gift or loan of property that is given to any person for the purpose of making an independent expenditure; or

(IV) Anything of value given, directly or indirectly, to any person for the purpose of making an independent expenditure.

(b) “Donation” shall not include a transfer by a membership organization of a portion of a member's dues for an independent expenditure sponsored by such membership organization.

(7.5) “Earmark” means a designation, instruction, or encumbrance that directs the transmission and use by the recipient of all or part of a donation to a third party for the purpose of making:

(a) Independent expenditures greater than one thousand dollars to support or oppose a specified candidate;

(b) Electioneering communications greater than one thousand dollars; or

(c) Contributions or expenditures greater than one thousand dollars to support or oppose a specified ballot issue or ballot question.

(8) “Election cycle” shall have the same meaning as set forth in section 2(6) of article XXVIII of the state constitution.

(9) “Electioneering communication” has the same meaning as set forth in section 2(7) of article XXVIII of the state constitution. For purposes of the disclosure required by section 1-45-108, “electioneering communication” also includes any communication that satisfies all other requirements set forth in said section 2(7) of article XXVIII but that is broadcast, printed, mailed, delivered, or distributed between the primary election and the general election.

(10)(a) “Expenditure” has the same meaning as set forth in section 2(8) of article XXVIII of the state constitution.

(b) “Expenditure” does not include legal services paid to defend a candidate or candidate committee against any action brought to enforce the provisions of article XXVIII of the state constitution or this article 45.

(10.5) “Foreign corporation” means:

(a) A parent corporation or the subsidiary of a parent corporation formed under the laws of a foreign country that is functionally equivalent to a domestic corporation;

(b) A parent corporation or the subsidiary of a parent corporation in which one or more foreign persons hold a combined ownership interest that exceeds fifty percent;

(c) A parent corporation or the subsidiary of a parent corporation in which one or more foreign persons hold a majority of the positions on the corporation's board of directors; or

(d) A parent corporation or the subsidiary of a parent corporation whose United States-based operations, or whose decision-making with respect to political activities, falls under the direction or control of a foreign entity, including the government of a foreign country.

(11) “Independent expenditure” shall have the same meaning as set forth in section 2(9) of article XXVIII of the state constitution.

(11.5) “Independent expenditure committee” means one or more persons that make an independent expenditure in support of or in opposition to a candidate in an aggregate amount in excess of one thousand dollars or that collect in excess of one thousand dollars from one or more persons for the purpose of making an independent expenditure.

(12)(a) “Issue committee” shall have the same meaning as set forth in section 2(10) of article XXVIII of the state constitution.

(b) For purposes of section 2(10)(a)(I) of article XXVIII of the state constitution, “major purpose” means support of or opposition to a ballot issue or ballot question that is reflected by:

(I) An organization's specifically identified objectives in its organizational documents at the time it is established or as such documents are later amended; or

(II) An organization's demonstrated pattern of conduct based upon it:

(A) Deleted by Laws 2022, Ch. 400 (S.B. 22-237), § 1, eff. June 7, 2022.

(B) Deleted by Laws 2022, Ch. 400 (S.B. 22-237), § 1, eff. June 7, 2022.

(C) During the combined period of the current calendar year and the preceding two calendar years, making either contributions to one or more statewide Colorado issue committees or direct ballot issue or ballot question expenditures, in either support of or opposition to one or more statewide Colorado ballot issues or ballot questions, that exceeded thirty percent of the total dollar amount of all funds spent by the organization for any purpose and in any location during the entire preceding and current calendar years;

(D) During the combined period of the current calendar year and the preceding two calendar years, making either contributions to a single statewide Colorado issue committee or direct ballot issue or ballot question expenditures, in either support of or opposition to a single statewide Colorado ballot issue or ballot question, that exceeded twenty percent of the total dollar amount of all funds spent by the organization for any purpose and in any location; or

(E) Acting as an issue committee's funding intermediary by making contributions to an issue committee from funds earmarked for the issue committee.

(c) The provisions of paragraph (b) of this subsection (12) are intended to clarify, based on the decision of the Colorado court of appeals in *Independence Institute v. Coffman*, 209 P.3d 1130 (Colo. App. 2008), cert. denied, 558 U.S. 1024, 130 S. Ct. 165, 175 L. Ed. 479 (2009), section 2(10)(a)(I) of article XXVIII of the state constitution and not to make a substantive change to said section 2(10)(a)(I).

(12.5) “Media outlet” means a publication or broadcast medium that transmits news, feature stories, entertainment, or other information to the public through various distribution channels, including, without limitation, newspapers; magazines; radio; and broadcast, cable, or satellite television.

(12.7) “Obligating” means, in connection with a named candidate, agreeing to spend in excess of one thousand dollars for an independent expenditure or to give, pledge, loan, or purchase one or more goods, services, or other things of value that have a fair market value in excess of one thousand dollars as an independent expenditure. “Obligating” shall not require that the total amount in excess of one thousand dollars be finally determined at the time of the agreement to spend moneys for an independent expenditure or to give, pledge, loan, or purchase anything of value.

(13) “Person” shall have the same meaning as set forth in section 2(11) of article XXVIII of the state constitution.

(14) “Political committee” shall have the same meaning as set forth in section 2(12) of article XXVIII of the state constitution.

(14.5) “Political organization” means a political organization defined in section 527(e)(1) of the federal “Internal Revenue Code of 1986”, as amended, that is engaged in influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any state or local public office in the state and that is exempt, or intends to seek any exemption, from taxation pursuant to section 527 of the internal revenue code. “Political organization” shall not be construed to have the same meaning as “political organization” as defined in section 1-1-104(24) for purposes of the “Uniform Election Code of 1992”, articles 1 to 13 of this title.

(15) “Political party” shall have the same meaning as set forth in section 2(13) of article XXVIII of the state constitution.

(15.3) “Regular biennial school election” means the election that is described in section 22-31-104(1), C.R.S.

(15.5) “Regular biennial school electioneering communication” has the same meaning as “electioneering communication” as defined in section 2(7) of article XXVIII of the state constitution; except that, for purpose of the definition of regular biennial school electioneering communication only, “candidate” as referenced in section 2(7)(a)(I) of said article means a candidate in a regular biennial school election and the requirements specified in section 2(7)(a)(II) mean a communication that is broadcast, printed, mailed, delivered, or distributed within sixty days before a regular biennial school election. Except as otherwise specified in this subsection (15.5), the definition of “regular biennial school electioneering communication” is the same as that of “electioneering communication”.

(15.7) “School district director” means a person serving as a director on the board of education of any school district within the state, including a school district composed of a city and county.

(16) “Small donor committee” shall have the same meaning as set forth in section 2(14) of article XXVIII of the state constitution.

(16.3)(a) “Small-scale issue committee” means an issue committee that has accepted or made contributions or expenditures in an amount that does not exceed five thousand dollars during an applicable election cycle for the major purpose of supporting or opposing any ballot issue or ballot question.

(b) The following are treated as a single small-scale issue committee:

(I) All small-scale issue committees that support or oppose a common ballot measure if the committees are established, financed, maintained, or controlled by a single corporation or its subsidiaries;

(II) All small-scale issue committees that support or oppose a common ballot measure if the committees are established, financed, maintained, or controlled by a single labor organization or the affiliated local units it directs; or

(III) All small-scale issue committees that support or oppose a common ballot measure if the committees are established, financed, maintained, or controlled by substantially the same person, group of persons, or other organizations.

(16.4) “Special school election” means any school election provided for by law and held at a time other than the regular biennial school election.

(16.5) “Spending” means funds expended influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any state or local public office in the state and includes, without limitation, any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything else of value by any political organization, a contract, promise, or agreement to expend funds made or entered into by any political organization, or any electioneering communication by any political organization.

(17) “Subsidiary” means a business entity having more than half of its stock owned by another entity or person, or a business entity of which a majority interest is controlled by another person or entity.

(18) “Unexpended campaign contributions” shall have the same meaning as set forth in section 2(15) of article XXVIII of the state constitution.

Credits

Recreated and reenacted by Laws 2003, Ch. 339, § 1, eff. June 3, 2003. Amended by Laws 2007, Ch. 289, §§ 1, 2, eff. July 1, 2007; Laws 2007, Ch. 396, § 1, eff. June 1, 2007; Laws 2009, Ch. 174, § 1, eff. Sept. 1, 2009; Laws 2010, Ch. 269, § 2, eff. May 25, 2010; Laws 2010, Ch. 270, § 4, eff. Jan. 1, 2011; Laws 2011, Ch. 264, § 2, eff. Aug. 10, 2011; Laws 2016, Ch. 267, § 1, eff. Aug. 10, 2016; Laws 2016, Ch. 269, § 1, eff. June 10, 2016; Laws 2018, Ch. 155, § 1, eff. April 23, 2018; Laws 2019, Ch. 69 (S.B. 19-068), § 1, eff. Aug. 2, 2019; Laws 2019, Ch. 328 (H.B. 19-1318), § 1, eff. Aug. 2, 2019; Laws 2022, Ch. 400 (S.B. 22-237), § 1, eff. June 7, 2022; Laws 2022, Ch. 99 (H.B. 22-1060), § 1, eff. July 1, 2022; Laws 2023, Ch. 399 (S.B. 23-276), § 46, eff. June 6, 2023.

C. R. S. A. § 1-45-103, CO ST § 1-45-103

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C.R.S.A. § 1-45-111.5

§ 1-45-111.5. Duties of the secretary of state--enforcement--sanctions--definitions

Effective: July 1, 2024

Currentness

(1) The secretary of state shall promulgate such rules, in accordance with article 4 of title 24, C.R.S., as may be necessary to enforce and administer any provision of this article.

(1.5)(a) Any person who believes that a violation of article XXVIII of the state constitution, the secretary of state's rules concerning campaign and political finance, or this article 45 has occurred may file a written complaint with the secretary of state in accordance with section 1-45-111.7.

(b) Any person who commits a violation of either the secretary of state's rules concerning campaign and political finance or this article that is not specifically listed in article XXVIII of the state constitution shall be subject to any of the sanctions specified in section 10 of article XXVIII of the state constitution or in this section.

(c) In addition to any other penalty authorized by article XXVIII of the state constitution or this article 45, a hearing officer may impose a civil penalty of fifty dollars per day for each day that a report, statement, or other document required to be filed under this article 45 that is not specifically listed in article XXVIII of the state constitution is not filed by the close of business on the day due. Any person who fails to file three or more successive committee registration reports or reports concerning contributions, expenditures, or donations in accordance with the requirements of section 1-45-107.5 shall be subject to a civil penalty of up to five hundred dollars for each day that a report, statement, or other document required to be filed by an independent expenditure committee is not filed by the close of business on the day due. Any person who knowingly and intentionally fails to file three or more reports due under section 1-45-107.5 shall be subject to a civil penalty of up to one thousand dollars per day for each day that the report, statement, or other document is not filed by the close of business on the day due. Imposition of any penalty under this subsection (1.5)(c) shall be subject to all applicable requirements specified in section 10 of article XXVIII of the state constitution governing the imposition of penalties.

(c.5) In addition to and without prejudice to any other penalty authorized under this article 45, a hearing officer shall impose a civil penalty as follows:

(I) At least one hundred dollars for each violation that is a failure to include a disclosure statement in accordance with section 1-46-103(2), if the violation does not involve any paid advertising or other spending to promote or attract attention to a communication prohibited by section 1-46-103(1), or such other higher amount that, based on the degree of distribution and public exposure to the unlawful communication, the hearing officer deems appropriate to deter future violations of section 1-46-103; and

(II) At least ten percent of the amount paid or spent to advertise, promote, or attract attention to a communication prohibited by section 1-46-103(1) that does not include a disclosure statement in accordance with section 1-46-103(2), or such other higher amount that, based on the degree of distribution and public exposure to the unlawful communication, the hearing officer deems appropriate to deter future violations of section 1-46-103.

(d) In connection with a complaint brought to enforce any requirement of article XXVIII of the state constitution or this article 45, a hearing officer may order disclosure of the source and amount of any undisclosed donations or expenditures.

(e) In connection with any action brought to enforce any provision of article XXVIII of the state constitution or this article 45, the membership lists of a membership organization, a labor organization or, in the case of a publicly held corporation, a list of the shareholders of the corporation, shall not be disclosed by means of discovery or by any other manner.

(f) Any person who is fined up to one thousand dollars per day for a knowing and intentional failure to file under paragraph (c) of this subsection (1.5) shall, if the person has shareholders or members, notify such shareholders or members of the penalty and the adjudicated violations on its publicly accessible website in a prominent manner for not less than one hundred eighty days after the final adjudication. A copy of this notice, with the website address used, shall be filed with the secretary of state and shall be a public record.

(g) The secretary of state has, as a matter of right, the right to intervene in any action pending before the office of administrative courts or the court of appeals that is brought to enforce the provisions of article XXVIII of the state constitution or this article.

(2) A party in any action brought to enforce the provisions of article XXVIII of the state constitution or of this article 45 is entitled to the recovery of the party's reasonable attorney fees and costs from any attorney or party who has brought or defended the action, either in whole or in part, upon a determination by the hearing officer that the action, or any part thereof, lacked substantial justification or that the action, or any part thereof, was commenced for delay or harassment or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct, including abuses of discovery procedures available under the Colorado rules of civil procedure. Notwithstanding any other provision of this subsection (2), no attorney fees may be awarded under this subsection (2) unless the court or hearing officer, as applicable, has first considered and issued written findings regarding the provisions of section 13-17-102(5) and (6). Either party in an action in which the hearing officer awarded attorney fees and costs may apply to a district court to convert an award of attorney fees and costs into a district court judgment. Promptly upon the conversion of the award of attorney fees and costs into a district court judgment, the clerk of the district court shall mail notice of the filing of the judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice must include the name and post-office address of the judgment creditor and the judgment creditor's lawyer, if any, in this state. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed. For purposes of this subsection (2), "lacked substantial justification" means substantially frivolous, substantially groundless, or substantially vexatious.

(3) Upon a determination by the hearing officer that an issue committee failed to file a report required pursuant to section 1-45-108, the hearing officer shall direct the issue committee to file any such report within ten days containing all required disclosure of any previously unreported contributions or expenditures and may, in addition to any other penalty, impose a penalty not to exceed twenty dollars for each contribution received and expenditure made by the issue committee that was not timely reported.

(4)(a) Upon failure of a witness or party to comply with an administrative subpoena issued in relation to an alleged campaign finance violation pursuant to article XXVIII of the state constitution or this article, the party that requested the administrative subpoena or the issuing agency may petition the district court ex parte with a copy of the petition sent to the subpoenaed witness or party and the administrative law judge by regular mail, for an order directing the witness or party to comply with the administrative subpoena.

(b) If the petition required by paragraph (a) of this subsection (4) shows to the district court's satisfaction that the administrative subpoena was properly served pursuant to rule 4 of the Colorado rules of civil procedure, the district court shall order the subpoenaed witness or party to appear before the district court and show cause why the witness or party should not be ordered to comply with the administrative subpoena. A copy of the petition and the court order shall be served, pursuant to rule 5 of the Colorado rules of civil procedure, on the witness or party at least fifteen days before the date designated for the witness or party to appear before the district court.

(c) At a show cause hearing ordered by the district court pursuant to paragraph (b) of this subsection (4), the court shall review the administrative subpoena and any evidence presented by the parties to determine compliance with the Colorado rules of civil procedure. The subpoenaed witness or party shall bear the burden of showing good cause as to why he or she should not be ordered to comply with the administrative subpoena.

(d) If the court determines that the subpoenaed witness or party is required to comply with the administrative subpoena:

(I) The district court shall order compliance forthwith and may impose remedial and punitive fines, including attorneys' fees and costs, for the witness's or party's failure to comply with the administrative subpoena; and

(II) The hearing officer shall schedule a hearing on the complaint to occur on a day after the occurrence of the required deposition and such other discovery as may be warranted due to such deposition.

(e) If the subpoenaed witness or party fails to appear at the show cause hearing, the district court may issue a bench warrant for the arrest of the subpoenaed witness or party and may impose other sanctions pursuant to the Colorado rules of civil procedure.

(5) Repealed by Laws 2019, Ch. 330 (S.B. 19-232), § 4, eff. July 1, 2019.

Credits

Added by Laws 2003, Ch. 339, § 6, eff. June 3, 2003. Amended by Laws 2005, Ch. 228, § 4, eff. June 1, 2005; Laws 2008, Ch. 112, § 1, eff. Apr. 10, 2008; Laws 2010, Ch. 269, § 6, eff. May 25, 2010; Laws 2010, Ch. 270, § 7, eff. Jan. 1, 2011; Laws 2011, Ch. 35, § 1, eff. March 21, 2011; Laws 2016, Ch. 290, § 1, eff. Aug. 10, 2016; Laws 2018, Ch. 155, § 7, eff. April 23, 2018; Laws 2019, Ch. 330 (S.B. 19-232), § 4, eff. July 1, 2019; Laws 2024, Ch. 250 (H.B. 24-1147), § 1, eff. July 1, 2024.

C. R. S. A. § 1-45-111.5, CO ST § 1-45-111.5

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C.R.S.A. § 1-45-111.7

§ 1-45-111.7. Campaign finance complaints--initial review--curing violations--investigation and enforcement--hearings--
advisory opinions--document review--collection of debts resulting from campaign finance penalties--definitions

Effective: August 7, 2024

Currentness

(1) **Definitions.** As used in this section, unless the context otherwise requires:

(a) “Article XXVIII” means article XXVIII of the state constitution.

(b) “Deputy secretary” means the deputy secretary of state appointed pursuant to section 24-21-105 or the deputy secretary's designee.

(c) “Division” means the division within the office of the secretary responsible for administering the state's laws governing campaign and political finance.

(d) “Hearing officer” means a person authorized to conduct a hearing under section 24-4-105(3).

(e) “Rules” means the rules of the secretary concerning campaign and political finance.

(f) “Secretary” means the secretary of state or the secretary's designate.

(2) **Filing complaints.** (a) Any person who believes that a violation has occurred of article XXVIII, this article 45, article 46 of this title 1, or the rules may file a complaint with the secretary.

(b) A complaint must be filed no later than one hundred eighty days after the date on which the complainant either knew or should have known, by the exercise of reasonable diligence, of the alleged violation.

(c) Any complaint must be filed in writing and signed by the complainant on the form provided by the secretary. The complaint must identify one or more respondents and include the information required to be provided on the form.

(d) Upon receipt of a complaint, the division shall notify the respondent of the complaint by e-mail or by regular mail if e-mail is unavailable.

(e) The division shall forward any complaint made against a candidate for secretary or the secretary to the department of law for the review of the complaint by the attorney general to act on behalf of the division in accordance with applicable requirements of this section.

(3) **Initial review.** (a) The division shall conduct an initial review of a complaint filed under subsection (2) of this section to determine whether the complaint:

(I) Was timely filed under subsection (2)(b) of this section;

(II) Specifically identifies one or more violations of article XXVIII, this article 45, or the rules; and

(III) Alleges sufficient facts to support a factual and legal basis for the violations of law alleged in the complaint.

(b) Within ten business days of receiving a complaint, the division shall take one or more of the actions specified in this subsection (3)(b):

(I) If the division makes an initial determination that the complaint was not timely filed, has not specifically identified one or more violations of article XXVIII, this article 45, or the rules, or does not assert facts sufficient to support a factual or legal basis for an alleged violation, the division shall prepare and file with the deputy secretary a motion to dismiss the complaint. The deputy secretary shall make a determination on the motion to dismiss within five business days, which must be provided to the complainant and the respondent by e-mail or by regular mail if e-mail is unavailable. If the deputy secretary denies the motion, the division shall determine whether to conduct a review under subsection (3)(b)(II) or (3)(b)(III) of this section. The final determination by the deputy secretary on the motion to dismiss constitutes final agency action and is subject to judicial review by a state district court under section 24-4-106.

(II) If the division makes an initial determination that the complaint alleges one or more curable violations as addressed in subsection (4) of this section, the division shall notify the respondent and provide the respondent an opportunity to cure the violations.

(III) If the division makes an initial determination that the complaint has specifically identified one or more violations of article XXVIII, this article 45, or the rules, and has alleged facts sufficient to support a factual or legal basis for each alleged violation, and that either a factual finding or a legal interpretation is required, the division shall conduct additional review under subsection (5) of this section within thirty days to determine whether to file a complaint with a hearing officer.

(4) **Curing violations.** (a) Upon the division's initial determination that a complaint alleges a failure to file or otherwise disclose required information, or alleges another curable violation, the division shall notify the respondent by e-mail or by regular mail if e-mail is unavailable of the curable deficiencies alleged in the complaint.

(b) The respondent has ten business days from the date the notice is e-mailed or mailed to file an amendment to any relevant report that cures any deficiencies specified in the notice.

(c) The respondent shall provide the division with notice of the respondent's intent to cure on the form provided by the secretary and include a copy of any amendments to any report containing one or more deficiencies.

(d) Upon receipt of the respondent's notice of an intent to cure, the division may ask the respondent to provide additional information and may grant the respondent an extension of time to file an amended notice of intent to cure in order to respond to any such request.

(e)(I) After the period for cure has expired, the division shall determine whether the respondent has cured any violation alleged in the complaint and, if so, whether the respondent has substantially complied with its legal obligations under article XXVIII, this article 45, and the rules in accordance with subsection (4)(f) of this section.

(II) If the division determines that the respondent has substantially complied with its legal obligations, the division shall prepare and file with the deputy secretary a motion to dismiss the complaint. The motion must be accompanied by a draft order specifying the manner in which the respondent has satisfied the factors specified in subsection (4)(f) of this section. The deputy secretary shall make a determination on the motion to dismiss, which must be provided to the complainant and the respondent by e-mail or by regular mail if e-mail is unavailable. If the deputy secretary denies the motion, the division shall determine whether to conduct a review under subsection (3)(b)(II) or (3)(b)(III) of this section. The determination by the deputy secretary under this subsection (4)(e)(II) is final agency action and is subject to judicial review by a state district court under section 24-4-106.

(III) If the division determines that the respondent has failed to substantially comply under subsection (4)(f) of this section, the division shall conduct an additional review under subsection (5)(a) of this section to determine whether to file the complaint with a hearing officer.

(f) In determining whether an entity substantially complied with its legal obligations under article XXVIII, this article 45, or the rules the division must consider:

(I) The extent of the respondent's noncompliance;

(II) The purpose of the provision violated and whether that purpose was substantially achieved despite the noncompliance; and

(III) Whether the noncompliance may properly be viewed as an intentional attempt to mislead the electorate or election officials.

(g) If the division determines that the respondent failed to cure any alleged deficiency, the division shall conduct an additional review under subsection (5)(a) of this section to determine whether to file a complaint with a hearing officer.

(5) **Investigations and enforcement.** (a)(I) The division shall investigate each complaint that was not dismissed during either its initial review or by means of the cure proceedings in accordance with subsection (3) or (4) of this section to determine whether to file a complaint with a hearing officer. The division may also initiate an investigation under subsection (7)(b) of this section.

(II) For the purpose of an investigation relating to a complaint filed under subsection (2)(a) of this section or an investigation initiated by the division under subsection (7)(b) of this section, the division may request the production of any documents or other tangible things that are believed to be relevant or material to the investigation, and shall establish the relevance and materiality in writing. Notwithstanding any other provision of law, documents or other tangible things provided to the division during the course of an investigation under this subsection (5) are not subject to inspection or copying under the “Colorado Open Records Act”, part 2 of article 72 of title 24. Notwithstanding any other provision of law, documents or other tangible things provided to the division during the course of an investigation under this subsection (5) and other materials prepared or assembled to assist the secretary's designee in reaching a decision are work product as defined in section 24-72-202(6.5)(a) and are not public records subject to inspection under part 2 of article 72 of title 24.

(III) If the division receives a person's membership list or donor list during the course of the division's initial review under subsection (3) of this section, investigation under this subsection (5), or the cure process, including the determination of substantial compliance, as described in subsection (4) of this section, the division shall not disclose such list or the identity of any member or donor to any person. Notwithstanding any other provision of law, any such membership or donor list is not a public record subject to inspection, copying, or any other form of reproduction under part 2 of article 72 of title 24.

(IV) The division shall determine whether it will file a complaint with a hearing officer within thirty days after initiating an investigation. If the division makes a determination that a complaint should not be filed with a hearing officer because there is not sufficient information to support the allegations contained in the complaint or for any other reason, it shall prepare and file with the deputy secretary a motion to dismiss the complaint. The deputy secretary shall make a determination on the motion to dismiss within thirty-five days of the initial determination of the division under this subsection (5)(a)(IV), or the initiation of an investigation by the division under subsection (7)(b) of this section, which must be provided to the complainant and the respondent by e-mail or by regular mail if e-mail is unavailable. If the deputy secretary denies the motion, the division has fourteen business days to file a complaint with a hearing officer under this subsection (5).

(V) If the division files a complaint with a hearing officer under this subsection (5), it is responsible for conducting such discovery as may be necessary for effectively prosecuting the complaint, supplementing or amending the complaint with such additional or alternative claims or allegations as may be supported by the division's investigation, amending the complaint to strike allegations or claims that are not supported by the division's investigation, and in all other respects prosecuting the complaint.

(b) A complainant or any other nonrespondent is not a party to the division's initial review, cure proceedings, investigation, or any proceedings before a hearing officer as described in this section. A complainant may seek permission from the hearing officer to file a brief as an amicus curiae. A person's status as a complainant is not sufficient to establish that he or she may be affected or aggrieved by the secretary's action on the complaint. To the extent this subsection (5)(b) conflicts in any respect with section 24-4-105 or 24-4-106, this subsection (5)(b) controls. A complainant may also seek judicial review by a state district court of a final agency action under section 24-4-106.

(6) Conduct of hearings. (a) Any hearing conducted by a hearing officer under this section must be in accordance with section 24-4-105; except that a hearing officer shall schedule a hearing within thirty days of the filing of the complaint, which hearing may be continued upon the motion of any party for up to thirty days or a longer extension of time upon a showing of good cause.

(b) Any initial determination made by a hearing officer must be made in accordance with section 24-4-105 and is subject to review by the deputy secretary. The final agency decision is subject to review under section 24-4-106.

(7) **Document review.** (a) In addition to any other powers and duties it possesses under law, the division may also review any document the secretary receives for filing under article XXVIII, this article 45, or the rules.

(b) In connection with the review of other available information regarding a potential violation under this subsection (7):

(I) If the division determines that a person violated or potentially violated any of the provisions of article XXVIII, this article 45, or the rules, the division shall either notify the person of his or her opportunity to cure the identified deficiencies in accordance with subsection (4) of this section or notify the person that the division is initiating an investigation under subsection (5) of this section. The division shall send the notification by e-mail or by regular mail if e-mail is unavailable.

(II) If the division initiates an investigation or files a complaint with a hearing officer in connection with its review, the procedures described in subsections (5) and (6) of this section apply.

(c) As used in this subsection (7), “review” means the factual inspection of any document required to be filed with the secretary for campaign finance registration, reporting, or disclosure in order to assess the document's accuracy and completeness and the timeliness of the document's filing.

(8) **Advisory opinions.** (a) Any person seeking guidance on the application of article XXVIII, this article 45, or the rules may request that the secretary issue an advisory opinion regarding that person's specific activity.

(b) The secretary shall determine, at the secretary's discretion, whether to issue an advisory opinion under subsection (8)(a) of this section. In making this determination, the secretary shall consider factors including whether:

(I) The advisory opinion will terminate a controversy or remove one or more uncertainties as to the application of the law to the requestor's situation;

(II) The request involves a subject, question, or issue that concerns a formal or informal matter or investigation currently pending before the secretary or a court; and

(III) The request seeks a ruling on a moot or hypothetical question.

(c) A person may rely on an advisory opinion issued by the secretary as an affirmative defense to any complaint filed under this section.

(d) A refusal by the secretary to issue an advisory opinion does not constitute a final agency action that is subject to appeal.

(9) **Debt collection.** (a) The secretary may pursue collection of any outstanding debt resulting from a campaign finance penalty that the secretary deems collectible.

(b) Repealed by Laws 2024, Ch. 338 (H.B. 24-1283), § 1, eff. August 7, 2024.

(10) **Municipal complaints.** (a) A complaint alleging that a violation of article XXVIII of the state constitution, this article 45, or the rules has occurred in connection with a municipal campaign finance matter must be filed with the clerk of the applicable municipality. Unless otherwise provided by local law, a complainant must file the complaint in writing, sign the complaint, and identify one or more respondents. The complaint shall be filed and processed in accordance with local law unless referred to the secretary as specified in subsection (10)(c)(I) or (10)(c)(II) of this section.

(b) The clerk shall conduct an initial review of a campaign finance complaint within ten business days of receiving the complaint or within the time specified in local law to determine whether the complaint satisfies the requirements of subsection (10)(a) of this section or the requirements of local law, as applicable. If, after initially reviewing a complaint pursuant to this subsection (10)(b), the clerk determines that a complaint does not satisfy the requirements of subsection (10)(a) of this section, the clerk shall dismiss the complaint.

(c)(I) If, after initially reviewing a campaign finance complaint pursuant to subsection (10)(b) of this section, the clerk determines that the complaint satisfies the requirements of subsection (10)(a) of this section and local law, as applicable, but presents an actual or potential conflict for the clerk or the clerk's staff, the clerk shall refer the complaint to the secretary, in a form and manner determined by the secretary, within fourteen business days of receiving the complaint if the municipality has adopted an ordinance that authorizes the municipality to refer a campaign finance complaint to the secretary based on an actual or potential conflict of the clerk or the clerk's staff, as determined in writing by the clerk.

(II) If the clerk of a statutory municipality that does not have a campaign finance complaint and hearing process determines, after initially reviewing a campaign finance complaint pursuant to subsection (10)(b) of this section, that a complaint satisfies the requirements of subsection (10)(a) of this section, the clerk shall refer the complaint to the secretary, in a form and manner determined by the secretary, within fourteen business days of receiving the complaint if the municipality has adopted an ordinance that authorizes the municipality to refer a campaign finance complaint to the secretary because the municipality does not have a campaign finance complaint and hearing process.

(d) To refer a campaign finance complaint to the secretary pursuant to this subsection (10), a municipality must have an ordinance that authorizes the municipality to refer such a complaint to the secretary and must provide a copy of the ordinance to the secretary. A municipality is not authorized to refer a campaign finance complaint to the secretary pursuant to this subsection (10) for an election that is fewer than one hundred eighty days after the ordinance is provided to the secretary. A municipal ordinance that authorizes the municipality to refer a campaign finance complaint to the secretary must:

(I) Authorize the secretary to use the provisions of subsections (3) to (7) of this section to process, investigate, and resolve the campaign finance complaint; except that the determination of whether the complaint was timely filed pursuant to subsection (3)(a)(I) of this section shall consider the time for filing a complaint under local law;

(II) Permit the filing of a campaign finance complaint no more than one hundred eighty days after the date on which the complainant either knew or should have known, by the exercise of reasonable diligence, of the alleged violation;

(III) Require the filing of a campaign finance complaint to be in writing and signed by the complainant on a form provided by the secretary, including identification of one or more respondents and including the information required to be provided on the form;

(IV) Direct the municipality to cooperate with the secretary in the processing and investigation of the campaign finance complaint; and

(V) Disclaim any interest of the municipality in fines collected in connection with a referred campaign finance complaint.

(e) Upon dismissing a complaint or referring a complaint to the secretary pursuant to this section, the clerk shall notify the complainant of the clerk's action by e-mail or by regular mail if e-mail is unavailable.

(f) A municipality must cooperate with the secretary in the review, investigation, and determination of any campaign finance complaint referred to the secretary pursuant to this section.

(g) If the secretary receives a campaign finance complaint referred by a clerk pursuant to subsection (10)(c)(I) or (10)(c)(II) of this section, the secretary shall deem the complaint filed pursuant to subsection (2) of this section on the date of receipt from the clerk, and the secretary shall ensure that the complaint is addressed in accordance with the requirements of this section. The determination that a conflict exists is not reviewable by the secretary.

(h) The secretary shall apply the substantive provisions of a home rule municipality's local law in processing, investigating, and resolving a campaign finance complaint referred to the secretary pursuant to this section.

(i) All fines collected in connection with a referred campaign finance complaint are payable to the secretary.

(j) The adoption of a local law authorizing the referral of a campaign finance complaint to the secretary pursuant to this section is not a waiver of the application of any provisions of article XX or XXVIII of the state constitution or section 1-45-116. Nothing in this subsection (10) requires a municipality to repeal an ordinance or resolution establishing a campaign finance complaint and hearing process.

(k) As used in this subsection (10):

(I) "Clerk" means the clerk of a municipality or the person or entity designated to review campaign finance complaints under a local law.

(II) "Conflict" means the actual or reasonably perceived inability to process a campaign finance complaint or impose a remedy in a fair and impartial manner, including an actual or reasonably perceived bias or other factors that may impact the independence of the decision-maker regarding the complainant or a candidate.

(III) "Local law" means a municipal charter, ordinance, or resolution that address the matters covered by article XXVIII of the state constitution and this article 45.

Credits

Added by Laws 2019, Ch. 330 (S.B. 19-232), § 1, eff. July 1, 2019. Amended by Laws 2021, Ch. 12 (S.B. 21-055), § 2, eff. March 21, 2021; Laws 2024, Ch. 250 (H.B. 24-1147), § 2, eff. July 1, 2024; Laws 2024, Ch. 338 (H.B. 24-1283), § 1, eff. Aug. 7, 2024.

C. R. S. A. § 1-45-111.7, CO ST § 1-45-111.7

Current through the Second Regular and Extraordinary Sessions, 74th General Assembly (2024). Some statute sections may be more current. See credits for details.

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Title 1. Elections (Refs & Annos)
Election Campaign Regulations
Article 46. Failure to Disclose a Deepfake in a Communication Concerning a Candidate for Elective Office

C.R.S.A. § 1-46-101

§ 1-46-101. Legislative declaration

Effective: July 1, 2024

Currentness

(1) The general assembly finds and declares that:

(a) The revolutionary innovations in generative artificial intelligence systems capable of producing image, audio, video, and multimedia content (AI-generated content) pose a threat to free and fair elections in the state;

(b) AI-generated content may be used to create deepfakes that falsely depict a candidate's speech or action in order to spread misinformation and disinformation at scale and with unprecedented speed; and

(c) A deepfake is analogous to a person being forced to say something in a video recorded under duress, where the victim appears to say something they would not normally say, one through force and the other through deepfake technology. A voter's opinion of a candidate may be irreparably tainted by a fabricated representation of a candidate or elected official saying or doing something they did not say or do. These false, negative portrayals may exist indefinitely once posted on the internet and permanently damage a candidate or elected official's reputation and even put their safety at risk.

Credits

Added by Laws 2024, Ch. 250 (H.B. 24-1147), § 3, eff. July 1, 2024.

C. R. S. A. § 1-46-101, CO ST § 1-46-101

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C.R.S.A. § 1-46-102

§ 1-46-102. Definitions

Effective: July 1, 2024

Currentness

As used in this article 46, unless the context otherwise requires:

(1)(a) “AI-generated content” means image, video, audio, multimedia, or text content that is substantially created or modified by generative artificial intelligence such that the use of generative artificial intelligence alters the meaning or significance that a reasonable person would take away from the content.

(b) “AI-generated content” does not include image, video, audio, multimedia, or text content that is minimally edited, adjusted, or enhanced by generative artificial intelligence such that the use of generative artificial intelligence does not materially alter the meaning or significance that a reasonable person would take away from the content.

(2)(a) “Candidate” has the same meaning as set forth in section 2(2) of article XXVIII of the state constitution; except that, “candidate” also includes any person who seeks nomination or election to any federal public office in this state.

(b) For purposes of this article 46, “candidate” also includes an incumbent or current office holder.

(3) “Deepfake” means an image, video, audio, or multimedia AI-generated content that falsely appears to be authentic or truthful and which features a depiction of an individual appearing to say or do something the individual did not say or do.

(4) “Generative artificial intelligence” or “generative AI” means an artificial intelligence system capable of generating novel image, video, audio, multimedia, or text content based on prompts or other forms of data provided by a person.

(5) “Metadata” means structural or descriptive information about data such as content, format, source, rights, accuracy, provenance, periodicity, granularity, publisher or responsible party, contact information, method of collection, and other descriptions.

(6) “Office” means the office of the secretary of state, or the section or division of the office of the secretary of state administering the election laws of this state pursuant to section 1-1-107(4).

(7) “Person” has the same meaning as set forth in section 1-13-109(3).

Credits

Added by Laws 2024, Ch. 250 (H.B. 24-1147), § 3, eff. July 1, 2024.

C. R. S. A. § 1-46-102, CO ST § 1-46-102

Current through the Second Regular and Extraordinary Sessions, 74th General Assembly (2024). Some statute sections may be more current. See credits for details.

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C.R.S.A. § 1-46-103

§ 1-46-103. Use of deepfakes in a communication concerning a
candidate for elective office--disclosure requirements--limitations--rules

Effective: July 1, 2024

Currentness

(1) Except as provided in subsections (2) and (3) of this section, no person shall distribute, disseminate, publish, broadcast, transmit, or display a communication concerning a candidate for elective office that includes a deepfake to an audience that includes members of the electorate for the elective office to be represented by the candidate either sixty days before a primary election or ninety days before a general election, if the person knows or has reckless disregard for the fact that the depicted candidate did not say or do what the candidate is depicted as saying or doing in the communication.

(2)(a) The prohibition in subsection (1) of this section does not apply to a communication that includes a disclosure stating, in a clear and conspicuous manner, that: “This (image/audio/video/multimedia) has been edited and depicts speech or conduct that falsely appears to be authentic or truthful.”

(b) A disclosure required under this section is considered to be made in a clear and conspicuous manner if the disclosure meets the following requirements:

(I) In a visual communication, the text of the disclosure statement appears in a font size no smaller than the largest font size of other text appearing in the visual communication. If the visual communication does not include any other text, the disclosure statement appears in a font size that is easily readable by the average viewer.

(II) In an audio communication, the disclosure statement shall be read in a clearly spoken manner in the same pitch, speed, language, and volume as the majority of the audio communication, at the beginning of the audio communication, at the end of the audio communication, and, if the audio communication is greater than two minutes in length, interspersed within the audio communication at intervals of not more than one minute each;

(III) The metadata of the communication includes the disclosure statement, the identity of the tool used to create the deepfake, and the date and time the deepfake was created;

(IV) The disclosure statement in the communication, including the disclosure statement in any metadata, is, to the extent technically feasible, permanent or unable to be easily removed by a subsequent user;

(V) The communication complies with any additional requirements for the disclosure statement that the secretary of state may adopt by rule to ensure that the disclosure statement is presented in a clear and conspicuous and understandable manner; and

(VI) In a broadcast or online visual or audio communication that includes a statement required by subsection (2) of this section, the statement satisfies all applicable requirements, if any, promulgated by the federal communications commission for size, duration, and placement.

(3) This section is subject to the following limitations:

(a) This section does not alter or negate any rights, obligations, or immunities of an interactive computer service in accordance with 47 U.S.C. sec. 230, as amended, and shall otherwise be construed in a manner consistent with federal law;

(b) This section does not apply to a radio or television broadcasting station, including a cable or satellite television operator, programmer, or producer that broadcasts a communication that includes a deepfake prohibited by subsection (1) of this section as part of a bona fide newscast, news interview, news documentary, or on-the-spot coverage of a bona fide news event, if the broadcast or publication clearly acknowledges through content or a disclosure, in a manner that can be easily heard and understood or read by the average listener or viewer, that there are questions about the authenticity of the deepfake in the communication;

(c) This section does not apply to a radio or television broadcasting station, including a cable or satellite television operator, programmer, producer, or streaming service, when the station is paid to broadcast a communication that includes a deepfake;

(d) This section does not apply to an internet website, or a regularly published newspaper, magazine, or other periodical of general circulation, including an internet or electronic publication or streaming service, that routinely carries news and commentary of general interest and that publishes a communication that includes a deepfake prohibited by subsection (1) of this section, if the publication clearly states that the communication that includes the deepfake does not accurately represent a candidate for elective office;

(e) This section does not apply to media content that constitutes satire or parody or the production of which is substantially dependent on the ability of an individual to physically or verbally impersonate the candidate and not upon generative AI or other technical means;

(f) This section does not apply to the provider of technology used in the creation of a deepfake; and

(g) This section does not apply to an interactive computer service, as defined in 47 U.S.C. sec. 230(f)(2), for any content provided by another information content provider as defined in 47 U.S.C. sec. 230(f)(3).

(4) The secretary of state shall promulgate such rules, in accordance with article 4 of title 24, as may be necessary to administer and enforce any provision of this article 46.

Credits

Added by Laws 2024, Ch. 250 (H.B. 24-1147), § 3, eff. July 1, 2024.

C. R. S. A. § 1-46-103, CO ST § 1-46-103

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C.R.S.A. § 1-46-104

§ 1-46-104. Enforcement--administrative hearing

Effective: July 1, 2024

Currentness

Any person who believes that a violation of section 1-46-103, or the secretary of state's rules concerning the use of a deepfake in a communication concerning a candidate for elective office, has occurred may file a written complaint with the office in accordance with section 1-45-111.7(2). Such complaint shall be reviewed and adjudicated in accordance with section 1-45-111.7 and the secretary of state's rules for complaints and administrative hearings pursuant to article 45 of this title 1.

Credits

Added by Laws 2024, Ch. 250 (H.B. 24-1147), § 3, eff. July 1, 2024.

C. R. S. A. § 1-46-104, CO ST § 1-46-104

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C.R.S.A. § 1-46-105

§ 1-46-105. Civil action--injunctive relief--damages

Effective: July 1, 2024

Currentness

(1) A candidate whose appearance, action, or speech is depicted in a deepfake that is included in a communication distributed in violation of section 1-46-103 may:

(a) Seek injunctive or other equitable relief prohibiting the distribution, dissemination, publication, broadcast, transmission, or display of the communication, and preventing the defendant from otherwise further violating this article 46;

(b) Bring an action for compensatory and punitive damages against the person that distributed, disseminated, published, broadcast, transmitted, or displayed the communication;

(c) Seek reasonable attorney fees, filing fees, and costs of action; and

(d) Seek any other just and appropriate relief necessary to enforce this article 46 and remedy the harm caused by the violation of section 1-46-103.

(2) An action commenced pursuant to subsection (1)(a) of this section must be heard by the district court at the earliest practical time.

(3) An action commenced pursuant to subsection (1)(a) or (1)(b) of this section does not limit or preclude a plaintiff from securing or recovering any other available remedy, or from seeking to institute a criminal action against the defendant.

(4) In any civil action alleging a violation of section 1-46-103, the plaintiff bears the burden of establishing the violation by clear and convincing evidence.

Credits

Added by Laws 2024, Ch. 250 (H.B. 24-1147), § 3, eff. July 1, 2024.

C. R. S. A. § 1-46-105, CO ST § 1-46-105

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C.R.S.A. § 1-46-106

§ 1-46-106. Limitation

Effective: July 1, 2024

Currentness

(1) Nothing in this article 46 limits or impairs in any way the right of the attorney general, or any person or entity, to pursue a legal action against a person in connection with a deepfake pursuant to any other law, cause of action, tort theory, or other authority.

(2) Nothing in this article 46 exempts a person who knowingly or recklessly distributes, disseminates, publishes, broadcasts, transmits, or displays a communication concerning a candidate for elective office that includes a false statement through a deepfake from criminal liability in accordance with section 1-13-109, or any other applicable provision of law.

Credits

Added by Laws 2024, Ch. 250 (H.B. 24-1147), § 3, eff. July 1, 2024.

C. R. S. A. § 1-46-106, CO ST § 1-46-106

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