

Virginia SB 164

OPPOSITION TESTIMONY

Jan. 31, 2023

Virginia Senate Senate Committee on General Laws and Technology

NetChoice respectfully asks that you **oppose** SB 164 which creates an ambiguous standard requiring disclosure of “AI Generation” on things as simple as auto-adjusting the brightness in a picture. It also violates constitutionally protected free speech with vague language and non-existent definitions of AI.

Today under existing law the Virginia Attorney General can take actions against any business that engages in unfair and deceptive actions including deceptive advertisements. It does not matter if those advertisements are created in whole or in part with artificial intelligence, but to any extent that they are used to deceive customers and unlawful ways prosecutions can occur right now without any new law.

Unfortunately, SB 164 goes well beyond deception to essentially outlaw any modification of any image with a computer. Because the law lacks any definition of artificial intelligence, it could be read to apply to anyone who uses color-correction on their smartphone to clean up an image. This would essentially lead to a mandated notification on every single advertisement of some sort of computer intervention and resulting in Virginia residents ignoring instances of legitimate concern and leading Virginians to ignore actual instances concerning alterations of images – in essence, by creating a problems of over notification, this bill would desensitize Virginians and undermine the bill’s purpose (i.e., notifying consumers of potential fraud).

At the same time, the law violates the First Amendment due to its ambiguous language and application. Because the bill lacks any definition of artificial intelligence, it is both unclear about what notifications would be needed and when. Accordingly, the law is vague and ambiguous and would be struck down on void for vagueness grounds.

NetChoice is a trade association of leading internet businesses that promotes the value, convenience, and choice that internet business models provide to American consumers. Our mission is to make the internet safe for free enterprise and free expression.

Rather than advance SB 164, the Virginia government should enforce its unfair and deceptive trade practices law against any instance of deception and advertisements, whether AI generated or not. Such enforcement of existing laws will make clear to anyone using artificial intelligence that every law applies to them and that criminals cannot escape justice just because they use a computer.

We share the sponsor's goal to better protect against undue foreign influence on America.

Again, we respectfully **ask you to oppose SB 164**. As always we offer ourselves as a resource to discuss any of these issues with you in further detail, and we appreciate the opportunity to provide the committee with our thoughts on this important matter.¹

Sincerely,

Carl Szabo
Vice President & General Counsel, NetChoice

NetChoice is a trade association that works to protect free expression and promote free enterprise online.

¹ The views of NetChoice expressed here do not necessarily represent the views of NetChoice members.