SENATE BILL REPORT
SB 6513

As of January 29, 2020

Title: An act relating to restricting the use of deepfake audio or visual media in campaigns for elective office.

Brief Description: Restricting the use of deepfake audio or visual media in campaigns for elective office.

Sponsors: Senators Frockt, Hunt, Nguyen, Billig, Hasegawa, Kuderer and Wilson, C.

Brief History:
  Committee Activity: State Government, Tribal Relations & Elections: 1/29/20.

Brief Summary of Bill

- Requires a disclosure when any manipulated audio or visual media of a candidate is used within 60 days of an election.

- Creates a cause of action for candidates whose voices or likenesses appear in deepfake media distributed without disclosure.

- Provides exceptions for parody and news reporting.

SENATE COMMITTEE ON STATE GOVERNMENT, TRIBAL RELATIONS & ELECTIONS

Staff: Samuel Brown (786-7470)

Background: Political Advertising. All political advertising must identify the sponsor of the advertisement. Political advertisements undertaken as independent expenditures or which are distributed within 60 days of an election must also disclose the five persons or entities making the largest aggregate contributions to the advertisement's sponsor of at least $1,000, and the top three individual contributors to any of the top five donors which are political or incidental committees.

A person cannot sponsor, with actual malice, a defamatory statement in political advertising that:
  - contains a false statement of material fact about a candidate for public office;

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- falsely represents that a candidate is an incumbent for the office sought; or
- falsely indicates that a candidate has the support or endorsement of an organization.

Deepfake Media. Advances in machine learning led to the development of technology where a person in an existing image or video is replaced with another's likeness and techniques to generate new synthetic audio of a person's speech based on past recordings of the person. Media created through machine learning to falsely depict a person's speech or conduct are known as deepfakes.

Summary of Bill: Use of Deepfake Media. Deepfake media is an image or audio or video recording of a candidate's appearance, speech, or conduct, that has been manipulated so that:
- it would falsely appear to a reasonable person that the candidate is performing an action or making a statement that did not occur; and
- the media would cause a reasonable person to have a fundamentally different understanding of the content of the media than of the unaltered media.

Deepfake media may not be distributed with the intent to injure a candidate's reputation or deceive a voter into supporting or opposing a candidate within 60 days of an election without a disclosure. The disclosure must state that the media has been manipulated and:
- for visual media, be printed in at least the largest font size of other text in the media or a size easily readable for the average viewer;
- for video media, appear for the duration of the video; and
- for audio media, be read in a clearly spoken manner and a pitch easily heard by the average listener at the beginning and end of the audio, and at least every two minutes during the audio, if applicable.

Exceptions are provided for:
- news media if the news presentation acknowledges that the media does not accurately reflect the speech or conduct of the candidate; and
- satire and parody.

Cause of Action. A candidate whose voice or likeness appears in deepfake media distributed without the required disclosure within 60 days of an election may seek to enjoin distribution of the media and bring an action for general or special damages against the party distributing the media. A prevailing party may be awarded attorneys' fees and costs. The violation of the disclosure requirement must be established by clear and convincing evidence.

Other Provisions. The bill contains a severability clause.

Appropriation: None.

Fiscal Note: Requested on January 27, 2020.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: In something as important as our elections, people need to know what they are being shown to preserve the public trust. Having the imprimatur of a legal construct helpfully sets the boundaries for what is acceptable in political discourse. Myth and disinformation are being weaponized online against society. The bill should be broadened to cover any form of manipulated content. The 60-day limitation could be abused. It is fine to go after content creators, but gatekeeper platforms are turning a blind eye to this kind of conduct. Deepfakes are sophisticated but highly accessible. Anybody can make them. This bill would put pressure to prevent dissemination of deepfakes.

OTHER: Broadcasters suggest an amendment—under the federal Communications Act, once a legally qualified candidate buys advertising on a station, the station cannot refuse or censor the advertisement. Algorithms to determine if media has been manipulated are not always accurate. To the degree this law has a disclosure requirement, it is a good step forward, but the Public Disclosure Commission recommends caution on any restriction and has concerns about how to enforce the bill's requirement that an intent to deceive voters be proven.

Persons Testifying: PRO: Senator David Frockt, Prime Sponsor; Professor Hao Li, citizen; Professor Hany Farid, citizen.

OTHER: Mark Allen, Washington State Association of Broadcasters; Vicki Christophersen, Internet Association; Anna Powell, CompTIA; Sean Flynn, Public Disclosure Commission.

Persons Signed In To Testify But Not Testifying: No one.