

HOUSE BILL REPORT

SB 5817

As Reported by House Committee On:
State Government & Tribal Relations

Title: An act relating to restricting the use of synthetic media in campaigns for elective office.

Brief Description: Restricting the use of synthetic media in campaigns for elective office.

Sponsors: Senators Frockt, Dhingra, Liias and Stanford; by request of Secretary of State.

Brief History:

Committee Activity:

State Government & Tribal Relations: 2/21/22, 2/23/22 [DP].

Brief Summary of Bill

- Requires a disclosure, with exceptions, when any synthetic media is used in electioneering communication.
- Creates a cause of action for candidates whose voices or likeness appear in synthetic media that is distributed without the required disclosure.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

Majority Report: Do pass. Signed by 4 members: Representatives Valdez, Chair; Lekanoff, Vice Chair; Dolan and Gregerson.

Minority Report: Without recommendation. Signed by 3 members: Representatives Volz, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; Graham.

Staff: Desiree Omli (786-7105).

Background:

Political Advertising.

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

Campaign finance laws require that political advertisements include certain disclaimers. Political advertisements on the radio or television must include the sponsor's name, and written ads must include the sponsor's name and address. It is illegal for the sponsor to use an assumed name. Additional disclaimer requirements apply when the advertisement is an independent expenditure or an electioneering communication sponsored by a person or entity other than a political party: they must include the statement "No candidate authorized this advertisement. It is paid for by [the sponsor's name and address]." Finally, if the sponsor is a political committee, the advertisement must include a statement disclosing the committee's top five contributors and the top three contributors to any of the top five contributors that are also political committees. Detailed requirements for visual and audio presentation are provided.

A person is prohibited from sponsoring, with actual malice, a statement constituting libel or defamation per se if the statement also:

- contains false statements of material fact about a candidate for public office;
- falsely represents that a candidate is the incumbent for the office sought; or
- falsely states or falsely implies the support or endorsement of any person or organization.

Actual malice means to act with knowledge of falsity or with reckless disregard as to truth or falsity.

Electioneering Communication.

Electioneering communication is any broadcast, cable, or satellite television, radio transmission, digital communication, United States postal service mailing, billboard, newspaper, or periodical that:

1. clearly identifies a candidate for a state, local, or judicial office either by specifically naming the candidate, or identifying the candidate without using the candidate's name;
2. is broadcast, transmitted electronically or by other means, mailed, erected, distributed, or otherwise published within 60 days before any election for that office in the jurisdiction in which the candidate is seeking election; and
3. either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the 60 days before an election, has a fair market value or cost of \$1,000 or more.

Summary of Bill:

Synthetic Media.

Synthetic media is defined as an image, audio recording, or video recording of an individual's appearance, speech, or conduct that has been intentionally manipulated to create realistic but false image, audio, or video that:

1. would appear to a reasonable person to be of a real individual's appearance, action, or

- speech, but that in reality did not actually occur; and
2. would cause a reasonable person to have a fundamentally different understanding or impression of the appearance, action, or speech of the content than they would have from the unaltered original version of the content.

A person is prohibited from distributing, with actual malice, electioneering communication that contains synthetic media that alters the appearance, action, or speech of a candidate unless the communication includes the following disclosure: "This (image/video/audio) has been manipulated."

The disclosure must meet the following criteria:

- For visual media, the text must be in a size that is easily readable by the average viewer and no smaller than the largest font size of other text appearing in the visual media; for video media, the text must also appear for the duration of the video.
- For audio media, the disclosure must be read in a clearly spoken manner and in a pitch that can be easily heard by the average listener. The disclosure must be read at the beginning of the audio, at the end of the audio, and, if applicable, at least every two minutes during the audio.

The sponsor of the political advertising is responsible for compliance with the disclosure requirements for synthetic media. However, a broadcasting station or other medium will instead be responsible for compliance if it changes the content of a political advertisement.

The disclosure requirements do not apply to:

- radio or television broadcasting stations that:
 - are broadcasting synthetic media as part of a bona fide newscast, news interview, news documentary, or on-the-spot news coverage of events if the broadcast acknowledges that there are questions about the authenticity of the synthetic media; or
 - are being paid to broadcast synthetic media.
- an internet website or other periodical of general circulation that routinely carries news and commentary of general interest, if the publication states that the synthetic media does not accurately represent the speech or conduct of the candidate; or
- synthetic media that constitutes satire or parody.

Cause of Action.

A candidate whose voice or likeness appears in a synthetic media distributed without the required disclosure may seek injunctive relief or other equitable relief to prohibit the distribution of the media. Such candidate may also bring an action for general or special damages against the entity that distributed the synthetic media without the required disclosure. A candidate bringing such actions must prove a violation through clear and convincing evidence. The prevailing party may be awarded attorneys' fees and costs.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Deep fake technology has been used in electioneering. Regulating speech is a sensitive issue and must be done with care, but realistic videos of candidates making extremely unpopular statements or saying the opposite of what they believe is not acceptable. The state should get ahead of this technology before it gets out of hand.

(Opposed) None.

(Other) Transparency through disclosure requirements is generally supported. There were concerns about a similar bill introduced in 2020 that the provisions may run into conflict with the Federal Communications Commission's rules and regulations dealing with political advertising that broadcasters must adhere to. This bill addresses those concerns. There are technical issues that the Public Disclosure Commission is working on with the sponsor and the Secretary of State's Office to resolve some questions in terms of the implementation of this policy.

Persons Testifying: (In support) Brian Hatfield, Office of the Secretary of State.

(Other) Sean Flynn, Public Disclosure Commission; and Mark Allen, Washington State Association of Broadcasters.

Persons Signed In To Testify But Not Testifying: None.