

ESSB 5152 - H COMM AMD

By Committee on State Government & Tribal Relations

ADOPTED AS AMENDED 04/06/2023

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The definitions used in chapter 42.17A
4 RCW apply throughout this chapter unless the context clearly requires
5 otherwise.

6 NEW SECTION. **Sec. 2.** (1) For purposes of this section
7 "synthetic media" means an image, an audio recording, or a video
8 recording of an individual's appearance, speech, or conduct that has
9 been intentionally manipulated with the use of generative adversarial
10 network techniques or other digital technology in a manner to create
11 a realistic but false image, audio, or video that produces:

12 (a) A depiction that to a reasonable individual is of a real
13 individual in appearance, action, or speech that did not actually
14 occur in reality; and

15 (b) A fundamentally different understanding or impression of the
16 appearance, action, or speech than a reasonable person would have
17 from the unaltered, original version of the image, audio recording,
18 or video recording.

19 (2) A candidate whose appearance, action, or speech is altered
20 through the use of a synthetic media in an electioneering
21 communication may seek injunctive or other equitable relief
22 prohibiting the publication of such synthetic media.

23 (3) A candidate whose appearance, action, or speech is altered
24 through the use of a synthetic media in an electioneering
25 communication may bring an action for general or special damages
26 against the sponsor. The court may also award a prevailing party
27 reasonable attorneys' fees and costs. This subsection does not limit
28 or preclude a plaintiff from securing or recovering any other
29 available remedy.

30 (4) It is an affirmative defense for any action brought under
31 this section that the electioneering communication containing a

1 synthetic media includes a disclosure stating, "This (image/video/
2 audio) has been manipulated," in the following manner:

3 (a) For visual media, the text of the disclosure must appear in
4 size easily readable by the average viewer and no smaller than the
5 largest font size of other text appearing in the visual media. If the
6 visual media does not include any other text, the disclosure must
7 appear in a size that is easily readable by the average viewer. For
8 visual media that is a video, the disclosure must appear for the
9 duration of the video; or

10 (b) If the media consists of audio only, the disclosure must be
11 read in a clearly spoken manner and in a pitch that can be easily
12 heard by the average listener, at the beginning of the audio, at the
13 end of the audio, and, if the audio is greater than two minutes in
14 length, interspersed within the audio at intervals of not more than
15 two minutes each.

16 (5) In any action commenced under this section, the plaintiff
17 bears the burden of establishing the use of synthetic media by clear
18 and convincing evidence.

19 (6) An action under this section takes precedence over other
20 cases, and must be speedily heard and determined.

21 NEW SECTION. **Sec. 3.** (1) For an action brought under section 2
22 of this act, the sponsor of the electioneering communication may be
23 held liable, and not the medium disseminating the electioneering
24 communication except as provided in subsection (2) of this section.

25 (2) Except when a licensee, programmer, or operator of a
26 federally licensed broadcasting station transmits an electioneering
27 communication that is subject to 47 U.S.C. Sec. 315, a medium may be
28 held liable in a cause of action brought under section 2 of this act
29 if:

30 (a) The medium removes any disclosure described in section 2(4)
31 of this act from the electioneering communication it disseminates; or

32 (b) Subject to affirmative defenses described in section 2 of
33 this act, the medium changes the content of an electioneering
34 communication such that it qualifies as synthetic media, as defined
35 in section 2 of this act.

36 (3)(a) No provider or user of an interactive computer service
37 shall be treated as the publisher or speaker of any information
38 provided by another information content provider. However, an

1 interactive computer service may be held liable in accordance with
2 subsection (2) of this section.

3 (b) "Interactive computer service" means any information service,
4 system, or access software provider that provides or enables computer
5 access by multiple users to a computer server, including specifically
6 a service or system that provides access to the internet and such
7 systems operated or services offered by libraries or educational
8 institutions.

9 (c) "Information content provider" means any person or entity
10 that is responsible, in whole or in part, for the creation or
11 development of information provided through the internet or any other
12 interactive computer service.

13 NEW SECTION. **Sec. 4.** The public disclosure commission must
14 adopt rules in furtherance of the purpose of this chapter. Nothing in
15 this chapter constitutes a violation under chapter 42.17A RCW, or
16 otherwise authorizes the public disclosure commission to take action
17 under RCW 42.17A.755.

18 NEW SECTION. **Sec. 5.** Sections 1 through 4 of this act
19 constitute a new chapter in Title 42 RCW.

20 NEW SECTION. **Sec. 6.** If any provision of this act or its
21 application to any person or circumstance is held invalid, the
22 remainder of the act or the application of the provision to other
23 persons or circumstances is not affected."

24 Correct the title.

EFFECT: Replaces the term "broadcasting station" with "medium disseminating the electioneering communication" and makes conforming changes in the act.

Exempts from liability under the act a licensee, programmer, or operator of a federally licensed broadcasting station when it transmits an electioneering communication that is subject to federal law prohibiting those entities from censoring the use of a broadcasting station by a legally qualified candidate.

Requires, rather than authorizes, the Public Disclosure Commission to adopt rules to further the purpose of the act.

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