
State Government & Tribal Relations Committee

HB 1442

Brief Description: Defining synthetic media in campaigns for elective office, and providing relief for candidates and campaigns.

Sponsors: Representatives Low, Christian, Abbarno, Chapman, Eslick and Pollet; by request of Secretary of State.

Brief Summary of Bill

- Creates a civil cause of action for candidates whose appearance, action, or speech is altered in electioneering communication through the use of synthetic media.
- Makes the inclusion of required disclosures an affirmative defense to a cause of action brought under this act.

Hearing Date: 1/27/23

Staff: Devon Mann (786-7290) and Desiree Omli (786-7105).

Background:

The Public Disclosure Commission (PDC) was created to provide timely public access to information about the financing of political campaigns, lobbyist expenditures, and the financial affairs of public officials and candidates, and to ensure compliance with contribution limits and other campaign finance restrictions. The PDC is led by five commissioners and an Executive Director appointed by the Governor and confirmed by the state Senate.

Under campaign finance laws, a person is prohibited from sponsoring, with actual malice, a

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political advertisement or electioneering communication constituting libel or defamation per se when the advertisement or communication:

- 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.

Campaign finance laws define actual malice as acting with knowledge of falsity or with reckless disregard as to truth or falsity. "Libel or defamation per se" is defined as statements that tend to (a) expose a living person to hatred, contempt, ridicule, or obloquy, or to deprive him or her of the benefit of public confidence or social intercourse, or to injure him or her in his or her business or occupation, or (b) injure any person, corporation, or association in his, her, or its business or occupation.

A political advertisement (ad) includes any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio, television presentations, digital communication, or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign. An 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.

A violation of the prohibition on sponsoring political advertisements or electioneering communication constituting libel or defamation per se must be proven by clear and convincing evidence. Damages are presumed, and do not need to be proven, if a violation is found.

Violations of campaign finance laws may result in civil penalties, sanctions, or criminal prosecution.

Summary of Bill:

A new cause of action is created for a candidate whose appearance, action, or speech is altered through the use of a synthetic media in an electioneering communication. 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 using digital technology in a manner to create a realistic but false image, audio clip, 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 than they would have from the unaltered original version of the content.

A candidate whose appearance, action, or speech is altered with actual malice, through the use of a synthetic media in an electioneering communication, may seek injunctive relief or other equitable relief to prohibit the distribution of the synthetic media. A candidate may also bring an action for general or special damages against the sponsor of the electioneering communication containing the synthetic media. A candidate bringing such actions bears the burden of proof by clear and convincing evidence. The prevailing party may be awarded reasonable attorney's fees and costs.

Including a disclosure with the communication containing synthetic media is an affirmative defense in a cause of action brought by a candidate if the disclosure contains the statement "This (image/video/audio) has been manipulated."

For visual media, the disclosure must be in a font 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. Disclosures in video media must also appear for the duration of the video. For media consisting of only audio, 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 electioneering communication is responsible for compliance with the disclosure requirements and for any violation of these provisions. However, a broadcasting station or other medium will instead be responsible if it changes the content of an electioneering communication such that the communication is no longer in compliance with these provisions.

The Public Disclosure Commission (PDC) may adopt rules for the purpose of this act, but a violation of the provisions of this act alone do not constitute a violation of campaign finance laws. The PDC does not have jurisdiction over violations of this act.

Appropriation: None.

Fiscal Note: Not requested.

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