

HOUSE BILL REPORT

HB 1442

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

Title: An act relating to defining synthetic media in campaigns for elective office, and providing relief for candidates and campaigns.

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 History:

Committee Activity:

State Government & Tribal Relations: 1/27/23, 2/1/23 [DPS].

Brief Summary of Substitute 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.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Ramos, Chair; Stearns, Vice Chair; Abbarno, Ranking Minority Member; Christian, Assistant Ranking Minority Member; Gregerson, Low and Mena.

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

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.

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 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: (1) 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 (2) 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 Substitute Bill:

A new cause of action is created for candidates who are the subject of synthetic media in 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 to create a 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 than they would have from the unaltered original version of the content.

A candidate who is the subject of synthetic media in an electioneering communication may bring a cause of action against a person who sponsored, with actual malice, the electioneering communication containing the synthetic media. Such candidate may seek injunctive relief or other equitable relief to prohibit the distribution of the synthetic media, and general or special damages against the sponsor or a broadcasting station if applicable. A candidate bringing such actions bears the burden of proof by clear and convincing evidence. The prevailing party may be awarded reasonable attorneys' fees and costs.

Including a disclosure with the electioneering communication that contains synthetic media is an affirmative defense in a cause of action brought under this act if the disclosure contains the statement "This (image/video/audio) has been manipulated," and meets the following criteria:

- 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.

A broadcasting station or other medium may be liable in a cause of action brought under the act if the broadcasting station or other medium:

1. removes previously present disclosures; or

2. alters, with actual malice, the electioneering communication such that it then qualifies as synthetic media, subject to the inclusion of the specified disclosure criteria.

A provider or user of an interactive computer service may not be treated as the publisher or speaker of any information provided by another information content provider, but may be liable in a cause of action brought under the act in the same way as a broadcasting station or other medium. An "interactive computer service" means a system that provides or enables computer access by multiple users to a computer server. An "information content provider" is any person or entity that is responsible for the creation or development of information provided through the internet or an interactive computer service.

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 and the PDC does not have jurisdiction over violations of this act.

Substitute Bill Compared to Original Bill:

The substitute bill makes changes to the original bill, including:

- requiring that a sponsor act with actual malice for a candidate to be successful in a cause of action brought for general and special damages, in addition to in a cause of action for an injunction;
- encouraging courts to expediate civil cases concerning synthetic media, instead of requiring that such cases take precedence over others;
- detailing a broadcasters' civil liability under the act by specifying that broadcasting stations or other mediums are liable for electioneering communication containing synthetic media if the broadcasting station or other medium removes previously present disclosures or if they alter, with actual malice, the electioneering communication such that it then qualifies as synthetic media, which is subject to available affirmative defenses; and
- specifying that a provider or user of an interactive computer service may not be treated as the publisher or speaker of any information provided by another information content provider.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

Deep fakes are becoming increasingly prevalent and increasingly realistic. This creates a

growing concern over how they might be used in negative ways to impact elections. This act is a preventative measure to stop those negative impacts before they become a real threat. It also levels the playing field for political candidates. The bill does not infringe on free speech, it just requires a disclosure and allows candidates to protect themselves by creating a civil cause of action.

Persons Testifying: Representative Sam Low, prime sponsor; and Steve Hobbs, Office of Secretary of State.

Persons Signed In To Testify But Not Testifying: None.