

# SENATE BILL REPORT

## ESSB 5152

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As Amended by House, April 6, 2023

**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:** Senate Committee on State Government & Elections (originally sponsored by Senators Valdez, Hunt, Kuderer, Liias, Nguyen and Wilson, C.; by request of Secretary of State).

**Brief History:**

**Committee Activity:** State Government & Elections: 1/24/23, 1/31/23 [DPS, DNP].

**Floor Activity:** Passed Senate: 2/15/23, 35-13.

Passed House: 4/6/23, 67-30.

**Brief Summary of Engrossed First Substitute Bill**

- Requires a disclosure when any manipulated audio or visual media of a candidate is used in an electioneering communication.
- Creates a private cause of action for candidates whose voices or likenesses appear in synthetic media distributed without disclosure.

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### SENATE COMMITTEE ON STATE GOVERNMENT & ELECTIONS

**Majority Report:** That Substitute Senate Bill No. 5152 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hunt, Chair; Valdez, Vice Chair; Fortunato, Hasegawa and Kuderer.

**Minority Report:** Do not pass.

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*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.*

Signed by Senators Wilson, J., Ranking Member; Dozier.

**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;
- 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.

Synthetic Media. Advances in machine learning led to the development of technology where a person in an existing image or video is replaced with another person'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 synthetic media or deepfakes.

**Summary of Engrossed First Substitute Bill:** Use of Synthetic Media. Synthetic media is defined as an image or audio or video recording of a person's appearance, speech, or conduct, that has been manipulated to create a realistic or false image, audio, or video that:

- would appear to a reasonable person of a real individual, but did not occur in reality; and
- would cause a reasonable person to have a fundamentally different understanding of the content of the media than of the unaltered media.

An electioneering communication which contains synthetic media may not be distributed 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.

Private Cause of Action. A candidate whose voice or likeness appears in synthetic 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. Prevailing parties may be awarded attorneys' fees and costs.

The plaintiff must establish a violation of the disclosure requirement by clear and convincing evidence. Actions filed under the act take precedence over other cases and must be speedily heard and resolved. Any broadcaster or other medium is not liable for damages unless it removes a disclosure or alters the content of the advertisement such that it becomes synthetic media by definition.

Other Provisions. The bill contains a severability clause.

**Appropriation:** None.

**Fiscal Note:** Available.

**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 on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: Overseas and domestic actors seek to spread misinformation. As technology evolves, bad actors have adapted their tactics. Last March, when Russia invaded Ukraine, deepfakes circulated of the Ukrainian president ordering his troops to lay down their weapons, causing mass confusion during a critical time for the country. We must be vigilant and secure our elections before this becomes an issue in Washington State. This will not infringe on freedom of speech.

OTHER: It will be helpful for the PDC to have rulemaking authority to clarify any terminology issues that arise. The PDC is concerned that this bill may regulate the content of speech, which courts have treated skeptically.

**Persons Testifying:** PRO: Senator Javier Valdez, Prime Sponsor; Steve Hobbs, Office of Secretary of State.

OTHER: Sean Flynn, Public Disclosure Commission.

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

#### **EFFECT OF HOUSE AMENDMENT(S):**

Use of Synthetic Media. A licensee, programmer, or operator of a federally licensed broadcasting station subject to federal law prohibiting censorship of electioneering communications by a legally qualified candidate is exempt from liability under the act. The term "broadcasting station" is changed to "medium disseminating the electioneering communication."

Private Cause of Action. Courts are encouraged to determine causes of action brought under the act expediently, rather than making cases brought under the act take precedence over other cases.

Other Provisions. The PDC is requires, rather than permitted, to make rules in furtherance of the act.