

SENATE BILL NO. 25

INTRODUCED BY J. ELLIS

BY REQUEST OF THE STATE ADMINISTRATION AND VETERANS' AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE USE OF DEEPFAKES IN ELECTION COMMUNICATIONS AND ELECTIONEERING COMMUNICATIONS; PROVIDING DEFINITIONS; PROVIDING EXCEPTIONS; PROVIDING FOR INJUNCTIVE RELIEF, ACTUAL DAMAGES, AND PUNITIVE DAMAGES; PROVIDING FOR THE FILING OF A COMPLAINT WITH THE COMMISSIONER OF POLITICAL PRACTICES; AND PROVIDING PENALTIES."

WHEREAS, the revolutionary innovations in generative artificial intelligence systems capable of producing image, audio, video, text, and multimedia content pose a threat to free and fair elections in the State of Montana; and

WHEREAS, AI-generated content may be used to create deepfakes that falsely depict a candidate's speech or action in order to spread misinformation and disinformation at scale and with unprecedented speed; and

WHEREAS, a deepfake is comparable to forcing a person to say or do something in a video recorded under threat, in which the person appears to say or do something the person would not normally say or do; and

WHEREAS, a voter's opinion of a candidate may be irreparably tainted by a fabricated representation of an officeholder, incumbent, or candidate saying or doing something the person did not say or do; and

WHEREAS, these false, negative portrayals may exist indefinitely once posted on the Internet and permanently damage an officeholder, incumbent, or candidate's reputation and even put the person's safety at risk.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 4], unless the context clearly indicates otherwise, the following definitions apply:

(1) (a) "AI-generated content" means image, video, audio, multimedia, or text content that is substantially created or modified by generative artificial intelligence in a manner that materially alters the meaning or significance that a reasonable person understands from the content.

(b) The term does not include image, video, audio, multimedia, or text content that is minimally edited, adjusted, or enhanced by generative artificial intelligence in a manner that does not materially alter the meaning or significance that a reasonable person understands from the content.

(2) "Candidate" has the same meaning as provided in 13-1-101(8) and, for the purposes of [sections 1 through 4], also includes an incumbent or current officeholder.

(3) "Deepfake" means AI-generated content or synthetic media that depicts a candidate or political party with the intent to injure the reputation of the candidate or party or otherwise deceive a voter. A deepfake:

(a) appears to a reasonable person to depict an individual saying or doing something that did not occur in reality; or

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

(4) "Generative artificial intelligence" means an artificial intelligence system capable of generating novel image, video, audio, multimedia, or text content based on prompts or other forms of data provided by a person.

(5) "Synthetic media" means an image, audio recording, or video recording of an individual's appearance, speech, or conduct that has been created or intentionally manipulated with the use of generative artificial intelligence or other digital technology to create a realistic but false image, audio, or video.

NEW SECTION. Section 2. Use of deepfakes in election communications and electioneering communications -- disclosure requirements -- exceptions. (1) (a) Except as provided in subsection (1)(b), a person, corporation, committee, political party, or other entity may not, within 60 days of the initiation of voting in an election at which a candidate for elective office appears on the ballot, ~~distribute, disseminate, publish, broadcast, transmit, or display~~ PAY FOR OR SPONSOR THE PRODUCTION, CREATION, OR INITIAL DISTRIBUTION OF an election communication or an electioneering communication that the person, corporation, committee, political

party, or other entity knew or should have known is a deepfake of a candidate or political party on the ballot.

(b) The prohibition in subsection (1)(a) does not apply to an election communication or electioneering communication that includes a disclosure stating, "This _____ (image/audio/video/multimedia) has been edited and depicts speech or conduct that falsely appears to be authentic or truthful".

(c) The disclosure required in subsection (1)(b) must:

(i) for a printed communication, be stated in bold font with a font size of at least 12 points;

(ii) for a television or video communication, be clearly readable throughout the communication and occupy at least 4% of the vertical picture height;

(iii) for a public internet communication that includes text or graphic components, be viewable without the user taking any action and be large enough to be clearly readable; or

(iv) for an audio component of a communication, be at least ~~40 seconds~~ 8 SECONDS in length and be spoken in a clearly audible and intelligible manner at either the beginning or the end of the audio component of the communication.

(2) ~~The following exceptions apply to this section~~ PROHIBITION IN SUBSECTION (1)(A) AND THE PENALTIES IN [SECTIONS 3 AND 4] DO NOT APPLY TO THE FOLLOWING:

(a) A A radio or television broadcasting station, including a cable television, satellite television, or streaming service operator, OR WEBSITE, OR programmer, or producer, may broadcast ~~an advertisement OR TRANSMIT A DEEPPAKE~~ as part of a bona fide newscast, news interview, news documentary, or on-the-spot coverage of a bona fide news event if the broadcast clearly acknowledges through ~~content~~ CONTEXT or a disclaimer, in a manner that can be easily read or heard, that ~~the advertisement was~~ CONTENT BEING BROADCAST OR TRANSMITTED MAY BE generated in whole or in part by using artificial intelligence and ~~does~~ MAY not accurately represent the speech or conduct of the depicted individual; ;

(b) A A radio or television broadcasting station, including a cable television, satellite television, or streaming service operator, OR WEBSITE, OR programmer, or producer, ~~may broadcast an advertisement that the station or streaming service is paid to broadcast if the station or streaming service shows that its disclosure requirements are consistent with the requirements provided in subsections (1)(b) and (1)(c) and that it provided those disclosure requirements to each person that purchased the broadcast or streaming of the advertisement~~ WHEN IT IS PAID TO BROADCAST A DEEPPAKE AND MAKES A GOOD FAITH EFFORT TO ESTABLISH THAT THE DEPICTION IS

1 NOT A DEEPPFAKE, OR IN CASES IN WHICH FEDERAL LAW REQUIRES BROADCASTERS TO AIR ADVERTISEMENTS FROM
2 LEGALLY QUALIFIED CANDIDATES; ;

3 (c) ~~An advertisement~~ A DEEPPFAKE that reasonably constitutes satire or parody ~~may be published,~~
4 ~~posted, or distributed if the advertisement includes a disclaimer consistent with the requirements provided in~~
5 ~~subsections (1)(b) and (1)(c);~~ ;

6 (d) A A distribution platform may publish, post, or distribute an advertisement or a prerecorded
7 phone message if the distribution platform shows that its disclaimer requirements are consistent with the
8 requirements provided in subsections (1)(b) and (1)(c) and that it provided those disclaimer requirements to the
9 person that purchased the distribution of the advertisement or prerecorded phone message by or on the
10 distribution platform; OR

11 (E) A PROVIDER OF AN INTERACTIVE COMPUTER SERVICE AS DEFINED IN 47 U.S.C. 230 FOR CONTENT
12 PROVIDED BY ANOTHER PARTY.

13
14 NEW SECTION. Section 3. Injunctive and civil relief. (1) In addition to any other penalties or
15 remedies provided by law, a candidate or political party representing the candidate aggrieved by a violation of
16 [section 2] may maintain an action in any court of equitable jurisdiction to prevent, restrain, or enjoin the
17 violation.

18 (2) An action commenced pursuant to subsection (1) must be expedited by the district court and
19 given preference over all other matters currently before the district court upon showing of present or ongoing
20 harm.

21 (3) If a violation of [section 2] is established, the court shall enjoin and restrain to otherwise prohibit
22 the violation and, in addition, shall assess in favor of the plaintiff and against the defendant the costs of the suit
23 and reasonable attorney fees.

24 (4) In the action, it is not necessary that actual damages to the plaintiff be alleged or proved, but
25 when alleged and proved, the plaintiff in the action, in addition to injunctive relief and fees and costs of suit, is
26 entitled to recover from the defendant the amount of actual damages sustained by the plaintiff and up to
27 \$10,000 in punitive damages.

28 (5) In any civil action alleging a violation of [section 2], the plaintiff bears the burden of establishing

the violation by clear and convincing evidence.

NEW SECTION. Section 4. Penalties. (1) A complaint of [section 2] may be filed with the commissioner of political practices pursuant to 13-37-111. A sufficiency finding from the commissioner of an investigation into a complaint filed under 13-37-111 is subject to civil penalties under 13-37-128 imposed by the commissioner or county attorney.

(2) A second sufficiency finding by the commissioner must be referred to the county attorney for misdemeanor prosecution. Upon conviction, a violation is punishable by a fine of not more than \$500, imprisonment in county jail for not more than 6 months, or both.

(3) A third sufficiency finding by the commissioner must be referred to the attorney general or county attorney for felony prosecution. Upon conviction, a violation is punishable by a fine of not more than \$5,000, imprisonment in the state prison for not more than 2 years, or both.

(4) All penalties accruing under this section are cumulative to each other, and a suit for or recovery of one is not a bar to the recovery of any other penalty.

(5) A prosecution under this section is not a bar to enforcement by injunction or other appropriate civil or administrative remedies.

NEW SECTION. Section 5. Codification instruction. [Sections 1 through 4] are intended to be codified as a new part of Title 13, chapter 35, and the provisions of Title 13, chapter 35, apply to [sections 1 through 4].

NEW SECTION. Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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