

JAN 19 2024

A BILL FOR AN ACT

RELATING TO ELECTIONS.

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

1 SECTION 1. The legislature finds that deepfakes are any
2 form of media that has been altered and manipulated to
3 misrepresent someone, typically in a way that shows the person
4 saying something that was never said. Deceptive and fraudulent
5 deepfakes have become a tool for political misinformation that
6 further disrupts public trust in government. Legislation has
7 been enacted in various jurisdictions, including California,
8 Michigan, Minnesota, Texas, Washington, and Wisconsin to prevent
9 and punish the spread of misinformation through deepfakes.

10 The purpose of this Act is to hinder the spread of
11 political misinformation in the State by prohibiting the
12 distribution of electioneering communications before an election
13 that a person knows or should have known are deceptive and
14 fraudulent deepfakes of a candidate or party.

15 SECTION 2. Chapter 11, Hawaii Revised Statutes, is amended
16 by adding a new section to be appropriately designated and to
17 read as follows:



1 "§11- Synthetic media; deceptive and fraudulent
2 deepfake; prohibitions; exceptions. (a) Except as provided in
3 subsection (b), no person shall, within ninety days prior to a
4 primary or general election, distribute a synthetic media
5 message in an electioneering communication that the person knows
6 or should have known is a deceptive and fraudulent deepfake of a
7 candidate or party.

8 (b) The prohibition in subsection (a) shall not apply if
9 the electioneering communication containing the synthetic media
10 includes a disclosure statement stating: "This
11 [image/audio/recording/video recording] has been manipulated or
12 generated by artificial intelligence.", and:

13 (1) If the media consists of an audio recording only, the
14 disclosure statement shall be read in a clearly spoken
15 manner and in a pitch that can be easily heard by the
16 average listener, at the beginning of the audio, at
17 the end of the audio, and, if the audio is greater
18 than two minutes in length, interspersed within the
19 audio at intervals of no more than two minutes each;
20 and

1 (2) For visual recordings, the text of the disclosure
2 statement shall appear in a size that is easily
3 readable by the average viewer and no smaller than the
4 largest font size of other text appearing in the
5 visual media; provided that if the visual media does
6 not include any other text, the disclosure statement
7 shall appear in a size that is easily readable by the
8 average viewer; provided further that for visual media
9 that is video, the disclosure statement shall appear
10 for the duration of the video.

11 (c) A candidate whose appearance, action, or speech is
12 depicted through the use of a deceptive and fraudulent deepfake
13 in violation of subsection (a) may seek injunctive or other
14 equitable relief prohibiting the publication of the deceptive
15 and fraudulent deepfake.

16 (d) The campaign spending commission may conduct
17 investigations into the publication of deceptive and fraudulent
18 deepfakes and assess administrative fines.

19 (e) A candidate whose appearance, action, or speech is
20 depicted using a deceptive and fraudulent deepfake in violation
21 of subsection (a) may bring an action for general or special



1 damages against the person that distributed the deceptive and
2 fraudulent deepfake. The court may award a prevailing party
3 reasonable attorneys' fees and costs.

4 (f) Nothing in this section shall limit or preclude a
5 plaintiff from seeking any other available civil remedy.

6 (g) This section shall not apply to:

7 (1) A radio or television broadcasting station, including
8 a cable or satellite television operator, programmer,
9 or producer, that broadcasts synthetic media as part
10 of a bona fide newscast, news interview, news
11 documentary, or on-the-spot coverage of bona fide news
12 events, if the broadcast clearly acknowledges through
13 content or a disclosure statement, in a manner that
14 can be easily heard or read by the average listener or
15 viewer, that there are questions about the
16 authenticity of the synthetic media;

17 (2) A radio or television broadcasting station, including
18 a cable or satellite television operator, programmer,
19 or producer, when the station is paid to broadcast a
20 synthetic media and has made a good faith effort to



1 establish the depiction in the synthetic media is not
2 a deceptive and fraudulent deepfake;

3 (3) An internet website, or a regularly published
4 newspaper, magazine, or other periodical of general
5 circulation, including an internet or electronic
6 publication, that routinely carries news and
7 commentary of general interest, and that publishes
8 deceptive and fraudulent deepfakes prohibited by this
9 section, if the publication clearly states that the
10 deceptive and fraudulent deepfake does not accurately
11 represent the speech or conduct of the candidate; and

12 (4) Synthetic media that constitutes satire or parody.

13 (h) If any provision of this section, or the application
14 thereof to any person or circumstance, is held invalid, the
15 invalidity does not affect other provisions or applications of
16 this section that can be given effect without the invalid
17 provision or application, and to this end the provisions of this
18 section are severable.

19 (i) As used in this section:

20 "Artificial intelligence" means:



- 1 (1) An artificial system that performs tasks under varying
2 and unpredictable circumstances without significant
3 human oversight or that can learn from experience and
4 improve performance when exposed to data sets;
- 5 (2) An artificial system developed in computer software,
6 physical hardware, or other context that solves tasks
7 requiring human-like perception, cognition, planning,
8 learning, communication, or physical action;
- 9 (3) An artificial system designed to think or act like a
10 human, including cognitive architectures and neural
11 networks;
- 12 (4) A set of techniques, including machine learning, that
13 is designed to approximate a cognitive task; or
- 14 (5) An artificial system designed to act rationally,
15 including an intelligent software agent or embodied
16 robot that achieves goals using perception, planning,
17 reasoning, learning, communicating, decision-making,
18 and acting.

19 "Deceptive and fraudulent deepfake" means synthetic media
20 that depicts a candidate or party with the intent to injure the



1 reputation of the candidate or party or otherwise deceive a
2 voter and that:

3 (1) Appears to a reasonable person to depict a real
4 individual saying or doing something that did not
5 actually occur in reality; or

6 (2) Provides a reasonable person a fundamentally different
7 understanding or impression of the appearance, action,
8 or speech than a reasonable person would have from the
9 unaltered, original version of an image, an audio
10 recording, or a video recording.

11 "Synthetic media" means an image, an audio recording, or a
12 video recording of an individual's appearance, speech, or
13 conduct that has been created or intentionally manipulated with
14 the use of generative adversarial network techniques or other
15 digital technology in a manner to create a realistic but false
16 image, audio recording, or video recording."

17 SECTION 3. New statutory material is underscored.

18 SECTION 4. This Act shall take effect upon its approval.



S.B. NO. 2396

Report Title:

Elections; Electioneering Communications; Synthetic Media;
Deepfakes; Prohibitions

Description:

Prohibits the distribution of electioneering communications before an election that a person knows or should have known are deceptive and fraudulent deepfakes of a candidate or party.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

