

Honolulu, Hawaii

MAR 01 2024

RE: S.B. No. 2687
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirty-Second State Legislature
Regular Session of 2024
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred S.B.
No. 2687 entitled:

"A BILL FOR AN ACT RELATING TO ELECTIONS,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Prohibit a person from distributing, or entering into an agreement with another person to distribute, materially deceptive media unless the media contains a disclaimer;
- (2) Establish remedies for parties injured by the distribution of materially deceptive media; and
- (3) Establish criminal penalties for distributing materially deceptive media.

Your Committee received testimony in support of this measure from the Campaign Spending Commission; Hawaii State AFL-CIO; League of Women Voters of Hawaii; Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO; Motion Picture Association; and one individual.

Your Committee received testimony in opposition to this measure from the Hawaii Association of Broadcasters, Inc.; Surfing 4 Truth; and sixty individuals.



Your Committee received comments on this measure from the Department of the Attorney General.

Your Committee finds that although artificial intelligence (AI) technology can greatly benefit certain aspects of society, it can also have dangerous consequences if applied maliciously. For example, the use of deepfakes or generative AI in elections can be a powerful tool used to spread disinformation and misinformation, which can increase political tensions and result in electoral-related conflict and violence. Several states, including Michigan, Minnesota, and Washington, have enacted legislation governing the use of AI elections. This measure will protect the democratic process in the State by establishing necessary regulations on the use of deepfake and generative AI technologies to influence elections.

Your Committee notes that your Committee intends for the Campaign Spending Commission to have the ability to refer violations of the new section established by this measure for prosecution pursuant to section 11-411, Hawaii Revised Statutes.

Your Committee has amended this measure by:

- (1) Clarifying that the new section added by this measure is placed in chapter 11, part XIII, Hawaii Revised Statutes;
- (2) Changing the applicable state of mind requirement from intentional to knowing for the prohibition on the distribution of the materially deceptive media that will harm the reputation or electoral prospects of a candidate in an election or to change the voting behavior of electors in an election by deceiving the electors into incorrectly believing that the depicted individual in fact engaged in the speech or conduct depicted;
- (3) Inserting language exempting broadcasters from the prohibition against distributing materially deceptive media if the broadcaster is required to run the materially deceptive media without editing the media pursuant to federal law or rule;



- (4) Allowing a Commissioner of the Campaign Spending Commission to maintain a cause of action for injunctive or other equitable relief against a person who is reasonably believed to violate or who is in the course of violating the prohibition against distributing materially deceptive media;
- (5) Clarifying that "materially deceptive media" must be an advertisement, as defined in section 11-302, Hawaii Revised Statutes;
- (6) Inserting an effective date of April 14, 2112, to encourage further discussion;
- (7) Amending section 1 to reflect its amended purpose; and
- (8) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2687, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2687, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary,



KARL RHOADS, Chair



