

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 although artificial
2 intelligence (AI) technology can greatly benefit certain aspects
3 of society, it can also have dangerous consequences if applied
4 maliciously. For example, the use of deepfakes or generative AI
5 in elections can be a powerful tool used to spread
6 disinformation and misinformation, which can increase political
7 tensions and result in electoral-related conflict and violence.
8 Several states, including Michigan, Minnesota, and Washington,
9 have enacted legislation governing the use of AI elections. The
10 legislature believes that regulating the use of deepfake and
11 generative AI technologies to influence elections is necessary
12 to protect the democratic process in the State.

13 Accordingly, the purpose of this Act is to:

14 (1) Prohibit a person from distributing, or entering into
15 an agreement with another person to distribute,
16 materially deceptive media unless the media contains a
17 disclaimer;



- 1 (2) Establish remedies for parties injured by the
- 2 distribution of materially deceptive media; and
- 3 (3) Establish criminal penalties for distributing
- 4 materially deceptive media.

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

8 "§11- Distribution of materially deceptive media;
9 prohibited; remedies; penalties. (a) Except as provided in
10 subsection (b), no person shall distribute, or enter into an
11 agreement with another person to distribute, materially
12 deceptive media if:

- 13 (1) The person knows or reasonably knows the media falsely
14 represents a depicted individual;
- 15 (2) The distribution occurs between the first working day
16 of February in every even numbered year through the
17 next general election; and
- 18 (3) The person intends or reasonably intends the
19 distribution of the materially deceptive media to harm
20 the reputation or electoral prospects of a candidate
21 in an election or to change the voting behavior of



1 electors in an election by deceiving the electors into
2 incorrectly believing that the depicted individual in
3 fact engaged in the speech or conduct depicted.

4 (b) Subsection (a) shall not apply if the media includes a
5 disclaimer informing the viewer that the media has been
6 manipulated by technical means and depicts appearance, speech,
7 or conduct that did not occur; provided that:

8 (1) If the media is a video, the disclaimer:

9 (A) Appears throughout the entirety of the video;

10 (B) Is clearly visible to and readable by an
11 observer;

12 (C) Is in letters at least as large as the largest
13 size of any text communication, or if there is no
14 other text communication, in a size that is
15 easily readable by an observer; and

16 (D) Is in the same language as the language used in
17 the video media;

18 (2) If the media is an image, the disclaimer:

19 (A) Is clearly visible to and readable by the
20 observer;



1 (B) Is in letters at least as large as the largest
2 text in the image if the media contains other
3 text; and

4 (C) Is in the same language as the language used in
5 the image media;

6 (3) If the media consists of only audio and contains no
7 image or video, the disclaimer is read:

8 (A) At the beginning and end of the media in a
9 clearly spoken manner;

10 (B) In a pitch that can easily be heard by the
11 listener; and

12 (C) In the same language as the audio media; and

13 (4) If the media was generated by editing or creating new
14 media from an existing image, audio, or video, the
15 media includes a citation directing the viewer or
16 listener to the original sources from which the
17 unedited version of the existing images, audios, or
18 videos were obtained or generated.

19 (c) A depicted individual, including a candidate for
20 election, whose appearance, action, or speech is altered or
21 affected through the use of materially deceptive media or any



1 organization that represents the interest of voters likely to be
2 deceived by the distribution of materially deceptive media, may
3 bring an action for general or special damages against a person
4 who violates this section.

5 The court, in its action and in addition to any judgment
6 awarded to the plaintiff or plaintiffs, may award a prevailing
7 party reasonable attorney's fees and costs; provided that this
8 subsection shall not limit or preclude a plaintiff from pursuing
9 any other available remedy.

10 (d) A cause of action for injunctive or other equitable
11 relief may be maintained against any person who is reasonably
12 believed to violate or who is in the course of violating this
13 section by:

- 14 (1) The attorney general;
- 15 (2) A county attorney or county prosecutor;
- 16 (3) The depicted individual;
- 17 (4) A candidate for nomination or election to a public
18 office who is injured or is likely to be injured by
19 dissemination of materially deceptive media; or



1 (5) Any organization that represents the interest of
2 voters likely to be deceived by the distribution of
3 materially deceptive media.

4 A court may issue a temporary or permanent injunction or
5 restraining order to prevent further harm to the plaintiff. If
6 a plaintiff, other than the attorney general, county attorney,
7 or county prosecutor, is awarded permanent injunctive relief
8 under this subsection, the court may award reasonable attorney's
9 fees and costs to the plaintiff.

10 The court may issue a civil fine for the violation of a
11 court order issued under this subsection in an amount of up to
12 \$1,000 per day.

13 (e) Any person violating subsection (a) shall be guilty of
14 a petty misdemeanor; provided that if the violation occurs
15 within five years of a previous conviction for a violation under
16 this section, the person shall be guilty of a misdemeanor;
17 provided further that if the person commits the violation with
18 the intent to cause violence or bodily harm, the person shall be
19 guilty of a class C felony.

20 (f) For the purposes of this section:



1 "Artificial intelligence" means a machine-based system that
2 can, for a given set of human-defined objectives, make
3 predictions, recommendations, or decisions influencing real or
4 virtual environments, and that uses machine and human-based
5 inputs to:

- 6 (1) Perceive real and virtual environments;
7 (2) Abstract perceptions of real and virtual environments
8 into models through analysis in an automated manner;
9 and
10 (3) Use model inference to formulate opinions for
11 information or action.

12 "Depicted individual" means an individual who is falsely
13 represented in a materially deceptive media.

14 "Distribute" means to convey information by any means.

15 "Materially deceptive media" means any information,
16 including any audio, image, or video, that:

- 17 (1) Falsely depicts an individual's appearance or voice;
18 (2) Falsely depicts an individual engaging in speech or
19 conduct in which the depicted individual did not in
20 fact engage;



1 (3) Would cause a reasonable viewer or listener to believe
2 that the depicted individual engaged in the speech or
3 conduct depicted; and

4 (4) Was intentionally created by:

5 (A) Generative adversarial network techniques or
6 another technique that translates a source image
7 into another image using machine learning, deep
8 learning techniques, and convolutional neural
9 networks;

10 (B) Artificial intelligence; or

11 (C) Digital technology."

12 SECTION 3. New statutory material is underscored.

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

14

INTRODUCED BY:



S.B. NO. 2687

Report Title:

Elections; Materially Deceptive Media; Artificial Intelligence; Deepfake Technology; Prohibition; Penalty

Description:

Prohibits a person from distributing, or entering into an agreement with another person to distribute, materially deceptive media unless the media contains a disclaimer. Establishes remedies for parties injured by the distribution of materially deceptive media. Establishes criminal penalties for distributing materially deceptive media. Defines "materially deceptive media".

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