

FINAL BILL REPORT

ESSB 5152

C 360 L 23
Synopsis as Enacted

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).

Senate Committee on State Government & Elections
House Committee on State Government & Tribal Relations

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: 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

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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. Courts are encouraged to expediently resolve cases brought under the act. Any medium disseminating the media 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. 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.

Other Provisions. The bill contains a severability clause. The Public Disclosure Commission must adopt rules to implement the act.

Votes on Final Passage:

Senate	35	13	
House	67	30	(House amended)
Senate	32	14	(Senate concurred)

Effective: July 23, 2023

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5152

68th Legislature
2023 Regular Session

Passed by the Senate April 14, 2023
Yeas 32 Nays 14

President of the Senate

Passed by the House April 6, 2023
Yeas 67 Nays 30

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5152** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5152

AS AMENDED BY THE HOUSE

Passed Legislature - 2023 Regular Session

State of Washington

68th Legislature

2023 Regular Session

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

READ FIRST TIME 02/01/23.

1 AN ACT Relating to defining synthetic media in campaigns for
2 elective office, and providing relief for candidates and campaigns;
3 and adding a new chapter to Title 42 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The definitions used in chapter 42.17A RCW
6 apply throughout this chapter unless the context clearly requires
7 otherwise.

8 NEW SECTION. **Sec. 2.** (1) For purposes of this section
9 "synthetic media" means an image, an audio recording, or a video
10 recording of an individual's appearance, speech, or conduct that has
11 been intentionally manipulated with the use of generative adversarial
12 network techniques or other digital technology in a manner to create
13 a realistic but false image, audio, or video that produces:

14 (a) A depiction that to a reasonable individual is of a real
15 individual in appearance, action, or speech that did not actually
16 occur in reality; and

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

1 (2) A candidate whose appearance, action, or speech is altered
2 through the use of a synthetic media in an electioneering
3 communication may seek injunctive or other equitable relief
4 prohibiting the publication of such synthetic media.

5 (3) A candidate whose appearance, action, or speech is altered
6 through the use of a synthetic media in an electioneering
7 communication may bring an action for general or special damages
8 against the sponsor. The court may also award a prevailing party
9 reasonable attorneys' fees and costs. This subsection does not limit
10 or preclude a plaintiff from securing or recovering any other
11 available remedy.

12 (4) It is an affirmative defense for any action brought under
13 this section that the electioneering communication containing a
14 synthetic media includes a disclosure stating, "This (image/video/
15 audio) has been manipulated," in the following manner:

16 (a) For visual media, the text of the disclosure must appear in
17 size easily readable by the average viewer and no smaller than the
18 largest font size of other text appearing in the visual media. If the
19 visual media does not include any other text, the disclosure must
20 appear in a size that is easily readable by the average viewer. For
21 visual media that is a video, the disclosure must appear for the
22 duration of the video; or

23 (b) If the media consists of audio only, the disclosure must be
24 read in a clearly spoken manner and in a pitch that can be easily
25 heard by the average listener, at the beginning of the audio, at the
26 end of the audio, and, if the audio is greater than two minutes in
27 length, interspersed within the audio at intervals of not more than
28 two minutes each.

29 (5) In any action commenced under this section, the plaintiff
30 bears the burden of establishing the use of synthetic media by clear
31 and convincing evidence.

32 (6) Courts are encouraged to determine matters under this section
33 expediently.

34 NEW SECTION. **Sec. 3.** (1) For an action brought under section 2
35 of this act, the sponsor of the electioneering communication may be
36 held liable, and not the medium disseminating the electioneering
37 communication except as provided in subsection (2) of this section.

38 (2) Except when a licensee, programmer, or operator of a
39 federally licensed broadcasting station transmits an electioneering

1 communication that is subject to 47 U.S.C. Sec. 315, a medium may be
2 held liable in a cause of action brought under section 2 of this act
3 if:

4 (a) The medium removes any disclosure described in section 2(4)
5 of this act from the electioneering communication it disseminates; or

6 (b) Subject to affirmative defenses described in section 2 of
7 this act, the medium changes the content of an electioneering
8 communication such that it qualifies as synthetic media, as defined
9 in section 2 of this act.

10 (3) (a) No provider or user of an interactive computer service
11 shall be treated as the publisher or speaker of any information
12 provided by another information content provider. However, an
13 interactive computer service may be held liable in accordance with
14 subsection (2) of this section.

15 (b) "Interactive computer service" means any information service,
16 system, or access software provider that provides or enables computer
17 access by multiple users to a computer server, including specifically
18 a service or system that provides access to the internet and such
19 systems operated or services offered by libraries or educational
20 institutions.

21 (c) "Information content provider" means any person or entity
22 that is responsible, in whole or in part, for the creation or
23 development of information provided through the internet or any other
24 interactive computer service.

25 NEW SECTION. **Sec. 4.** The public disclosure commission must
26 adopt rules in furtherance of the purpose of this chapter. Nothing in
27 this chapter constitutes a violation under chapter 42.17A RCW, or
28 otherwise authorizes the public disclosure commission to take action
29 under RCW 42.17A.755.

30 NEW SECTION. **Sec. 5.** Sections 1 through 4 of this act
31 constitute a new chapter in Title 42 RCW.

32 NEW SECTION. **Sec. 6.** If any provision of this act or its
33 application to any person or circumstance is held invalid, the
34 remainder of the act or the application of the provision to other
35 persons or circumstances is not affected.

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