**5152-S.E AMH SGOV H1820.1 - NOT FOR FLOOR USE**

**ESSB 5152** - H COMM AMD

By Committee on State Government & Tribal Relations

**ADOPTED AS AMENDED 04/06/2023**

Strike everything after the enacting clause and insert the following:

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

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

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

(b) 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.

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

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

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

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

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

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

(6) An action under this section takes precedence over other cases, and must be speedily heard and determined.

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

(2) Except when a licensee, programmer, or operator of a federally licensed broadcasting station transmits an electioneering communication that is subject to 47 U.S.C. Sec. 315, a medium may be held liable in a cause of action brought under section 2 of this act if:

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

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

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

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

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

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

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

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

Correct the title.

EFFECT: Replaces the term "broadcasting station" with "medium disseminating the electioneering communication" and makes conforming changes in the act.

Exempts from liability under the act a licensee, programmer, or operator of a federally licensed broadcasting station when it transmits an electioneering communication that is subject to federal law prohibiting those entities from censoring the use of a broadcasting station by a legally qualified candidate.

Requires, rather than authorizes, the Public Disclosure Commission to adopt rules to further the purpose of the act.