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**SUBSTITUTE HOUSE BILL 1442**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** House State Government & Tribal Relations (originally sponsored by Representatives Low, Christian, Abbarno, Chapman, Eslick, and Pollet; by request of Secretary of State)

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

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

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 who is the subject of synthetic media in an electioneering communication may bring a cause of action against the person or entity who sponsored, with actual malice, the electioneering communication containing the synthetic media. Such candidate may seek injunctive or other equitable relief prohibiting the publication of such synthetic media. The candidate may also seek general or special damages against the sponsor of the electioneering communication, or a broadcasting station or other medium in accordance with section 3 of this act. 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.

(3) 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.

(4) In any action commenced under this section, the plaintiff bears the burden of proof by clear and convincing evidence.

(5) Courts are encouraged to determine matters under this section expediently.

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 broadcasting station or other medium except as provided in subsection (2) of this section.

(2) A broadcasting station or other medium may be held liable in a cause of action brought under section 2 of this act if:

(a) The broadcasting station or other medium removes any disclosure described in section 2(3) of this act from the electioneering communication it broadcasts; or

(b) Subject to affirmative defenses described in section 2 of this act, the broadcasting station or other medium changes, with actual malice, the content of an electioneering communication such that it then 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 may 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.

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