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## State Government & Tribal Relations Committee

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### ESSB 5152

**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).

#### Brief Summary of Engrossed Substitute Bill

- Creates a civil cause of action for candidates whose appearance, action, or speech is altered in electioneering communication through the use of synthetic media.
- Makes the inclusion of required disclosures an affirmative defense to a cause of action brought under this act.

**Hearing Date:** 3/10/23

**Staff:** Desiree Omli (786-7105).

#### Background:

Under campaign finance laws, a person is prohibited from sponsoring, with actual malice, a political advertisement or electioneering communication constituting libel or defamation per se when the advertisement or communication:

- contains false statements of material fact about a candidate for public office;
- falsely represents that a candidate is the incumbent for the office sought; or
- falsely states or falsely implies the support or endorsement of any person or organization.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

A political advertisement (ad) includes any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio, television presentations, digital communication, or other means of mass communication used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign.

An electioneering communication is any broadcast, cable or satellite television, radio transmission, digital communication, United States Postal Service mailing, billboard, newspaper, or periodical that:

1. clearly identifies a candidate for a state, local, or judicial office either by specifically naming the candidate, or identifying the candidate without using the candidate's name;
2. is broadcast, transmitted electronically or by other means, mailed, erected, distributed, or otherwise published within 60 days before any election for that office in the jurisdiction in which the candidate is seeking election; and
3. either alone, or in combination with, one or more communications identifying the candidate by the same sponsor during the 60 days before an election, has a fair market value or cost of \$1,000 or more.

A violation of the prohibition on sponsoring political advertisements or electioneering communication constituting libel or defamation per se must be proven by clear and convincing evidence. Damages are presumed, and do not need to be proven, if a violation is found. Violations of campaign finance laws may result in civil penalties, sanctions, or criminal prosecution.

### **Summary of Bill:**

A new cause of action is created for candidates who are the subject of synthetic media in electioneering communication.

Synthetic media is defined as an image, audio recording, or video recording of an individual's appearance, speech, or conduct that has been intentionally manipulated with the use of generate adversarial network techniques or other digital technology in a manner to create a realistic but false image, audio, or video that produces:

1. a depiction that, to a reasonable person, is of a real individual in appearance, action, or speech that did not actually occur in reality; and
2. a fundamentally different understanding or impression of the appearance, action, or speech than they would have from the unaltered original version of the image, audio recording, or video recording.

A candidate who is the subject of synthetic media in an electioneering communication may seek an injunction or other equitable relief prohibiting the publication of the synthetic media. Such a candidate may also bring a cause of action against the sponsor of the electioneering communication for general or special damages. The prevailing party in a cause of action for

damages may be awarded reasonable attorneys' fees and costs. A candidate bringing such actions bears the burden of proof by clear and convincing evidence. In order to prevail in a cause of action for an injunction or damages, the candidate must establish the use of synthetic media by clear and convincing evidence.

Including a disclosure with a electioneering communication that contains synthetic media is an affirmative defense in a cause of action brought under this act if the disclosure contains the statement "This (image/video/audio) has been manipulated," and meets the following criteria:

- For visual media, the disclosure must be in a font size that is easily readable by the average viewer and no smaller than the largest font size of any other text appearing in the visual media. Disclosures in video media must also appear for the duration of the video.
- For media consisting of only audio, the disclosure must be read in a clearly spoken manner and in a pitch that can be easily heard by the average listener. The disclosure must be read at the beginning of the audio, at the end of the audio, and, if applicable, at least every two minutes during the audio.

An action brought under this act takes precedence over other cases and must be speedily heard and determined.

A broadcasting station or other medium may be liable in a cause of action brought under the act if the broadcasting station or other medium:

1. removes previously present disclosures; or
2. alters the electioneering communication such that it then qualifies as synthetic media, unless the requisite disclosure is included

A provider or user of an interactive computer service may not be treated as the publisher or speaker of any information provided by another information content provider, but may be liable in a cause of action brought under the act in the same way as a broadcasting station or other medium. An "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. An "information content provider" is any person or entity that is responsible for the creation or development of information provided through the internet or any other interactive computer service.

The Public Disclosure Commission (PDC) may adopt rules for the purpose of this act, but a violation of the provisions of this act alone do not constitute a violation of campaign finance laws and the PDC does not have jurisdiction over violations of this act.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.