

Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 24-0168.04 Alison Killen x4350

HOUSE BILL 24-1147

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A BILL FOR AN ACT

101 **CONCERNING THE USE OF A DEEPAKE IN A COMMUNICATION RELATED**
102 **TO A CANDIDATE FOR ELECTIVE OFFICE, AND, IN CONNECTION**
103 **THEREWITH, REQUIRING DISCLOSURE, PROVIDING FOR**
104 **ENFORCEMENT, AND CREATING A PRIVATE CAUSE OF ACTION**
105 **FOR CANDIDATES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill creates a statutory scheme to regulate the use of deepfakes produced using generative artificial intelligence (AI) in communications

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

about candidates for elective office. **Sections 1 and 2** of the bill expand the existing authority of an administrative hearing officer under the "Fair Campaign Practices Act" (act) to impose civil penalties for distribution of a communication that includes a deepfake related to a candidate for elective office in violation of the provisions of **section 3**.

Section 3 prohibits the distribution of a communication that includes an undisclosed deepfake with actual malice as to the deceptiveness or falsity of the communication related to a candidate for public office. **Section 3** also defines "AI", "deepfake", and the requirements for a clear, conspicuous, and understandable disclosure statement regarding a deepfake that are necessary to avoid a violation of the new prohibition. In addition to meeting the specific statutory requirements for a clear and conspicuous disclosure statement, the disclosure statement must be included in the communication's metadata and, to the extent technically feasible, must be permanent or unable to be easily removed by subsequent users. The disclosure statement must also conform to any subsequent requirements established by the secretary of state through rulemaking.

Any person who believes there has been a violation of the statutory or regulatory requirements for disclosure of the use of a deepfake in a communication concerning a candidate for elective office may file a complaint with the office of the secretary of state (secretary). The secretary shall hear such complaints in accordance with the secretary's existing complaint and administrative hearing procedures under the act, and punish such complaints in accordance with **sections 1 and 2**.

Additionally, a candidate who is the subject of a communication that includes a deepfake and does not comply with the disclosure requirements may bring a civil action for injunction or for general or special damages or both. In either type of action, the plaintiff-candidate must prove the defendant's actual malice as to the falsity or deceptiveness of the communication that includes the deepfake by clear and convincing evidence, consistent with established case law principles related to the right of free speech.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 1-45-111.5, **add**
3 (1.5)(c.5) as follows:

4 **1-45-111.5. Duties of the secretary of state - enforcement -**
5 **sanctions - definitions.** (1.5) (c.5) IN ADDITION TO AND WITHOUT
6 PREJUDICE TO ANY OTHER PENALTY AUTHORIZED UNDER THIS ARTICLE 45,

1 A HEARING OFFICER SHALL IMPOSE A CIVIL PENALTY AS FOLLOWS:

2 (I) AT LEAST ONE HUNDRED DOLLARS FOR EACH VIOLATION THAT
3 IS A FAILURE TO INCLUDE A DISCLOSURE STATEMENT IN ACCORDANCE
4 WITH SECTION 1-46-103 (2), IF THE VIOLATION DOES NOT INVOLVE ANY
5 PAID ADVERTISING OR OTHER SPENDING TO PROMOTE OR ATTRACT
6 ATTENTION TO A COMMUNICATION PROHIBITED BY SECTION 1-46-103 (1),
7 OR SUCH OTHER HIGHER AMOUNT THAT, BASED ON THE DEGREE OF
8 DISTRIBUTION AND PUBLIC EXPOSURE TO THE UNLAWFUL
9 COMMUNICATION, THE HEARING OFFICER DEEMS APPROPRIATE TO DETER
10 FUTURE VIOLATIONS OF SECTION 1-46-103; AND

11 (II) AT LEAST TEN PERCENT OF THE AMOUNT PAID OR SPENT TO
12 ADVERTISE, PROMOTE, OR ATTRACT ATTENTION TO A COMMUNICATION
13 PROHIBITED BY SECTION 1-46-103 (1) THAT DOES NOT INCLUDE A
14 DISCLOSURE STATEMENT IN ACCORDANCE WITH SECTION 1-46-103 (2), OR
15 SUCH OTHER HIGHER AMOUNT THAT, BASED ON THE DEGREE OF
16 DISTRIBUTION AND PUBLIC EXPOSURE TO THE UNLAWFUL
17 COMMUNICATION, THE HEARING OFFICER DEEMS APPROPRIATE TO DETER
18 FUTURE VIOLATIONS OF SECTION 1-46-103.

19 **SECTION 2.** In Colorado Revised Statutes, 1-45-111.7, **amend**
20 (2)(a) as follows:

21 **1-45-111.7. Campaign finance complaints - initial review -**
22 **curing violations - investigation and enforcement - hearings -**
23 **advisory opinions - document review - collection of debts resulting**
24 **from campaign finance penalties - definitions. (2) Filing complaints.**

25 (a) Any person who believes that a violation has occurred of article
26 XXVIII, this article 45, ARTICLE 46 OF THIS TITLE 1, or the rules may file
27 a complaint with the secretary.

1 **1-46-102. Definitions.** AS USED IN THIS ARTICLE 46, UNLESS THE
2 CONTEXT OTHERWISE REQUIRES:

3 (1) (a) "AI-GENERATED CONTENT" MEANS IMAGE, VIDEO, AUDIO,
4 MULTIMEDIA, OR TEXT CONTENT THAT IS SUBSTANTIALLY CREATED OR
5 MODIFIED BY GENERATIVE ARTIFICIAL INTELLIGENCE SUCH THAT THE USE
6 OF GENERATIVE ARTIFICIAL INTELLIGENCE ALTERS THE MEANING OR
7 SIGNIFICANCE THAT A REASONABLE PERSON WOULD TAKE AWAY FROM THE
8 CONTENT.

9 (b) "AI-GENERATED CONTENT" DOES NOT INCLUDE IMAGE, VIDEO,
10 AUDIO, MULTIMEDIA, OR TEXT CONTENT THAT IS MINIMALLY EDITED,
11 ADJUSTED, OR ENHANCED BY GENERATIVE ARTIFICIAL INTELLIGENCE SUCH
12 THAT THE USE OF GENERATIVE ARTIFICIAL INTELLIGENCE DOES NOT
13 MATERIALLY ALTER THE MEANING OR SIGNIFICANCE THAT A REASONABLE
14 PERSON WOULD TAKE AWAY FROM THE CONTENT.

15 (2) (a) "CANDIDATE" HAS THE SAME MEANING AS SET FORTH IN
16 SECTION 2 (2) OF ARTICLE XXVIII OF THE STATE CONSTITUTION; EXCEPT
17 THAT, "CANDIDATE" ALSO INCLUDES ANY PERSON WHO SEEKS NOMINATION
18 OR ELECTION TO ANY FEDERAL PUBLIC OFFICE IN THIS STATE.

19 (b) FOR PURPOSES OF THIS ARTICLE 46, "CANDIDATE" ALSO
20 INCLUDES AN INCUMBENT OR CURRENT OFFICE HOLDER.

21 (3) "DEEPFAKE" MEANS AN IMAGE, VIDEO, AUDIO, OR MULTIMEDIA
22 AI-GENERATED CONTENT THAT FALSELY APPEARS TO BE AUTHENTIC OR
23 TRUTHFUL AND WHICH FEATURES A DEPICTION OF AN INDIVIDUAL
24 APPEARING TO SAY OR DO SOMETHING THE INDIVIDUAL DID NOT SAY OR DO
25 WITHOUT THE PERSON'S CONSENT.

26 (4) "GENERATIVE ARTIFICIAL INTELLIGENCE" OR "GENERATIVE AI"
27 MEANS AN ARTIFICIAL INTELLIGENCE SYSTEM CAPABLE OF GENERATING

1 NOVEL IMAGE, VIDEO, AUDIO, MULTIMEDIA, OR TEXT CONTENT BASED ON
2 PROMPTS OR OTHER FORMS OF DATA PROVIDED BY A PERSON.

3 (5) "METADATA" MEANS STRUCTURAL OR DESCRIPTIVE
4 INFORMATION ABOUT DATA SUCH AS CONTENT, FORMAT, SOURCE, RIGHTS,
5 ACCURACY, PROVENANCE, PERIODICITY, GRANULARITY, PUBLISHER OR
6 RESPONSIBLE PARTY, CONTACT INFORMATION, METHOD OF COLLECTION,
7 AND OTHER DESCRIPTIONS.

8 (6) "OFFICE" MEANS THE OFFICE OF THE SECRETARY OF STATE, OR
9 THE SECTION OR DIVISION OF THE OFFICE OF THE SECRETARY OF STATE
10 ADMINISTERING THE ELECTION LAWS OF THIS STATE PURSUANT TO SECTION
11 1-1-107 (4).

12 (7) "PERSON" HAS THE SAME MEANING AS SET FORTH IN SECTION
13 1-13-109 (3).

14 **1-46-103. Use of deepfakes in a communication concerning a**
15 **candidate for elective office - disclosure requirements - limitations -**
16 **rules.** (1) EXCEPT AS PROVIDED IN SUBSECTIONS (2) AND (3) OF THIS
17 SECTION, NO PERSON SHALL DISTRIBUTE, DISSEMINATE, PUBLISH,
18 BROADCAST, TRANSMIT, OR DISPLAY A COMMUNICATION CONCERNING A
19 CANDIDATE FOR ELECTIVE OFFICE THAT INCLUDES A DEEPPAKE WITH
20 ACTUAL MALICE AS TO THE FALSITY OR DECEPTIVENESS OF THE
21 COMMUNICATION.

22 (2) (a) THE PROHIBITION IN SUBSECTION (1) OF THIS SECTION DOES
23 NOT APPLY TO A COMMUNICATION THAT INCLUDES A DISCLOSURE STATING,
24 IN A CLEAR AND CONSPICUOUS MANNER, THAT: "THIS
25 (IMAGE/AUDIO/VIDEO/MULTIMEDIA) INCLUDES A DEEPPAKE CREATED
26 USING GENERATIVE ARTIFICIAL INTELLIGENCE."

27 (b) A DISCLOSURE REQUIRED UNDER THIS SECTION IS CONSIDERED

1 TO BE MADE IN A CLEAR AND CONSPICUOUS MANNER IF THE DISCLOSURE
2 MEETS THE FOLLOWING REQUIREMENTS:

3 (I) IN A VISUAL COMMUNICATION, THE TEXT OF THE DISCLOSURE
4 STATEMENT APPEARS IN A FONT SIZE NO SMALLER THAN THE LARGEST
5 FONT SIZE OF OTHER TEXT APPEARING IN THE VISUAL COMMUNICATION. IF
6 THE VISUAL COMMUNICATION DOES NOT INCLUDE ANY OTHER TEXT, THE
7 DISCLOSURE STATEMENT APPEARS IN A FONT SIZE THAT IS EASILY
8 READABLE BY THE AVERAGE VIEWER.

9 (II) IN AN AUDIO COMMUNICATION, THE DISCLOSURE STATEMENT
10 IS READ IN A CLEARLY SPOKEN MANNER AND IN A PITCH AND AT A SPEED
11 THAT CAN BE EASILY HEARD AND UNDERSTOOD BY THE AVERAGE
12 LISTENER, AT THE BEGINNING OF THE AUDIO COMMUNICATION, AT THE END
13 OF THE AUDIO COMMUNICATION, AND, IF THE AUDIO COMMUNICATION IS
14 GREATER THAN TWO MINUTES IN LENGTH, INTERSPERSED WITHIN THE
15 AUDIO COMMUNICATION AT INTERVALS OF NOT MORE THAN TWO MINUTES
16 EACH;

17 (III) IN A COMMUNICATION THAT INCLUDES BOTH VISUAL AND
18 AUDIO CONTENT, THE DISCLOSURE STATEMENT SATISFIES THE
19 REQUIREMENTS OF SUBSECTIONS (2)(b)(I) AND (2)(b)(II) OF THIS SECTION;

20 (IV) THE METADATA OF THE COMMUNICATION, IF ANY, INCLUDES
21 THE DISCLOSURE STATEMENT, THE IDENTITY OF THE TOOL USED TO CREATE
22 THE DEEPPFAKE, AND THE DATE AND TIME THE DEEPPFAKE WAS CREATED;

23 (V) THE DISCLOSURE STATEMENT IN THE COMMUNICATION,
24 INCLUDING THE DISCLOSURE STATEMENT IN ANY METADATA, IS, TO THE
25 EXTENT TECHNICALLY FEASIBLE, PERMANENT OR UNABLE TO BE EASILY
26 REMOVED BY A SUBSEQUENT USER; AND

27 (VI) THE COMMUNICATION COMPLIES WITH ANY ADDITIONAL

1 REQUIREMENTS FOR THE DISCLOSURE STATEMENT THAT THE SECRETARY
2 OF STATE MAY ADOPT BY RULE TO ENSURE THAT THE DISCLOSURE
3 STATEMENT IS PRESENTED IN A CLEAR AND CONSPICUOUS AND
4 UNDERSTANDABLE MANNER.

5 (3) THIS SECTION IS SUBJECT TO THE FOLLOWING LIMITATIONS:

6 (a) THIS SECTION DOES NOT ALTER OR NEGATE ANY RIGHTS,
7 OBLIGATIONS, OR IMMUNITIES OF AN INTERACTIVE SERVICE PROVIDER IN
8 ACCORDANCE WITH 47 U.S.C. SEC. 230, AS AMENDED, AND SHALL
9 OTHERWISE BE CONSTRUED IN A MANNER CONSISTENT WITH FEDERAL LAW;

10 (b) THIS SECTION DOES NOT APPLY TO A RADIO OR TELEVISION
11 BROADCASTING STATION, INCLUDING A CABLE OR SATELLITE TELEVISION
12 OPERATOR, PROGRAMMER, OR PRODUCER THAT BROADCASTS A
13 COMMUNICATION THAT INCLUDES A DEEPPAKE PROHIBITED BY
14 SUBSECTION (1) OF THIS SECTION AS PART OF A BONA FIDE NEWSCAST,
15 NEWS INTERVIEW, NEWS DOCUMENTARY, OR ON-THE-SPOT COVERAGE OF
16 A BONA FIDE NEWS EVENT, IF THE BROADCAST OR PUBLICATION CLEARLY
17 ACKNOWLEDGES THROUGH CONTENT OR A DISCLOSURE, IN A MANNER
18 THAT CAN BE EASILY HEARD AND UNDERSTOOD OR READ BY THE AVERAGE
19 LISTENER OR VIEWER, THAT THERE ARE QUESTIONS ABOUT THE
20 AUTHENTICITY OF THE DEEPPAKE IN THE COMMUNICATION;

21 (c) THIS SECTION DOES NOT APPLY TO A RADIO OR TELEVISION
22 BROADCASTING STATION, INCLUDING A CABLE OR SATELLITE TELEVISION
23 OPERATOR, PROGRAMMER, OR PRODUCER, WHEN THE STATION IS PAID TO
24 BROADCAST A COMMUNICATION THAT INCLUDES A DEEPPAKE;

25 (d) THIS SECTION DOES NOT APPLY TO AN INTERNET WEBSITE, OR
26 A REGULARLY PUBLISHED NEWSPAPER, MAGAZINE, OR OTHER PERIODICAL
27 OF GENERAL CIRCULATION, INCLUDING AN INTERNET OR ELECTRONIC

1 PUBLICATION, THAT ROUTINELY CARRIES NEWS AND COMMENTARY OF
2 GENERAL INTEREST AND THAT PUBLISHES A COMMUNICATION THAT
3 INCLUDES A DEEPPAKE PROHIBITED BY SUBSECTION (1) OF THIS SECTION,
4 IF THE PUBLICATION CLEARLY STATES THAT THE COMMUNICATION THAT
5 INCLUDES THE DEEPPAKE DOES NOT ACCURATELY REPRESENT A
6 CANDIDATE FOR ELECTIVE OFFICE; AND

7 (e) THIS SECTION DOES NOT APPLY TO MEDIA CONTENT THAT
8 CONSTITUTES SATIRE OR PARODY OR THE PRODUCTION OF WHICH IS
9 SUBSTANTIALLY DEPENDENT ON THE ABILITY OF AN INDIVIDUAL TO
10 PHYSICALLY OR VERBALLY IMPERSONATE THE CANDIDATE AND NOT UPON
11 GENERATIVE AI OR OTHER TECHNICAL MEANS.

12 (4) THE SECRETARY OF STATE SHALL PROMULGATE SUCH RULES,
13 IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, AS MAY BE NECESSARY TO
14 ADMINISTER AND ENFORCE ANY PROVISION OF THIS ARTICLE 46.

15 **1-46-104. Enforcement - administrative hearing.** ANY PERSON
16 WHO BELIEVES THAT A VIOLATION OF SECTION 1-46-103, OR THE
17 SECRETARY OF STATE'S RULES CONCERNING THE USE OF A DEEPPAKE IN A
18 COMMUNICATION CONCERNING A CANDIDATE FOR ELECTIVE OFFICE, HAS
19 OCCURRED MAY FILE A WRITTEN COMPLAINT WITH THE OFFICE IN
20 ACCORDANCE WITH SECTION 1-45-111.7 (2). SUCH COMPLAINT SHALL BE
21 REVIEWED AND ADJUDICATED IN ACCORDANCE WITH SECTION 1-45-111.7
22 AND THE SECRETARY OF STATE'S RULES FOR COMPLAINTS AND
23 ADMINISTRATIVE HEARINGS PURSUANT TO ARTICLE 45 OF THIS TITLE 1.

24 **1-46-105. Civil action - injunctive relief - damages.** (1) A
25 CANDIDATE WHOSE APPEARANCE, ACTION, OR SPEECH IS DEPICTED IN A
26 DEEPPAKE THAT IS INCLUDED IN A COMMUNICATION DISTRIBUTED IN
27 VIOLATION OF SECTION 1-46-103 MAY:

1 (a) SEEK INJUNCTIVE OR OTHER EQUITABLE RELIEF PROHIBITING
2 THE DISTRIBUTION, DISSEMINATION, PUBLICATION, BROADCAST,
3 TRANSMISSION, OR DISPLAY OF THE COMMUNICATION; AND

4 (b) BRING AN ACTION FOR GENERAL OR SPECIAL DAMAGES
5 AGAINST THE PERSON THAT DISTRIBUTED, DISSEMINATED, PUBLISHED,
6 BROADCAST, TRANSMITTED, OR DISPLAYED THE COMMUNICATION.

7 (2) AN ACTION COMMENCED PURSUANT TO SUBSECTION (1)(a) OF
8 THIS SECTION MUST BE HEARD BY THE DISTRICT COURT AT THE EARLIEST
9 PRACTICAL TIME.

10 (3) AN ACTION COMMENCED PURSUANT TO SUBSECTION (1)(a) OR
11 (1)(b) OF THIS SECTION DOES NOT LIMIT OR PRECLUDE A PLAINTIFF FROM
12 SECURING OR RECOVERING ANY OTHER AVAILABLE REMEDY.

13 (4) IN ANY CIVIL ACTION ALLEGING A VIOLATION OF SECTION
14 1-46-103, THE PLAINTIFF BEARS THE BURDEN OF ESTABLISHING THE
15 VIOLATION BY CLEAR AND CONVINCING EVIDENCE.

16 **SECTION 4. Effective date - applicability.** This act takes effect
17 July 1, 2024, and applies to communications distributed on or after said
18 date.

19 **SECTION 5. Safety clause.** The general assembly finds,
20 determines, and declares that this act is necessary for the immediate
21 preservation of the public peace, health, or safety or for appropriations for
22 the support and maintenance of the departments of the state and state
23 institutions.