

**Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

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 DEEFAKE 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.

SENATE
Amended 2nd Reading
April 23, 2024

HOUSE
3rd Reading Unamended
March 11, 2024

HOUSE
Amended 2nd Reading
March 8, 2024

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) "DEEPPFAKE" 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
25 DO.

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 DEEFAKE TO AN
20 AUDIENCE THAT INCLUDES MEMBERS OF THE ELECTORATE FOR THE
21 ELECTIVE OFFICE TO BE REPRESENTED BY THE CANDIDATE EITHER SIXTY
22 DAYS BEFORE A PRIMARY ELECTION OR NINETY DAYS BEFORE A GENERAL
23 ELECTION, IF THE PERSON KNOWS OR HAS RECKLESS DISREGARD FOR THE
24 FACT THAT THE DEPICTED CANDIDATE DID NOT SAY OR DO WHAT THE
25 CANDIDATE IS DEPICTED AS SAYING OR DOING IN THE COMMUNICATION.

26 (2) (a) THE PROHIBITION IN SUBSECTION (1) OF THIS SECTION DOES
27 NOT APPLY TO A COMMUNICATION THAT INCLUDES A DISCLOSURE STATING,

1 IN A CLEAR AND CONSPICUOUS MANNER, THAT: "THIS
2 (IMAGE/AUDIO/VIDEO/MULTIMEDIA) HAS BEEN EDITED AND DEPICTS
3 SPEECH OR CONDUCT THAT FALSELY APPEARS TO BE AUTHENTIC OR
4 TRUTHFUL."

5 (b) A DISCLOSURE REQUIRED UNDER THIS SECTION IS CONSIDERED
6 TO BE MADE IN A CLEAR AND CONSPICUOUS MANNER IF THE DISCLOSURE
7 MEETS THE FOLLOWING REQUIREMENTS:

8 (I) IN A VISUAL COMMUNICATION, THE TEXT OF THE DISCLOSURE
9 STATEMENT APPEARS IN A FONT SIZE NO SMALLER THAN THE LARGEST
10 FONT SIZE OF OTHER TEXT APPEARING IN THE VISUAL COMMUNICATION. IF
11 THE VISUAL COMMUNICATION DOES NOT INCLUDE ANY OTHER TEXT, THE
12 DISCLOSURE STATEMENT APPEARS IN A FONT SIZE THAT IS EASILY
13 READABLE BY THE AVERAGE VIEWER.

14 (II) IN AN AUDIO COMMUNICATION, THE DISCLOSURE STATEMENT
15 SHALL BE READ IN A CLEARLY SPOKEN MANNER IN THE SAME PITCH,
16 SPEED, LANGUAGE, AND VOLUME AS THE MAJORITY OF THE AUDIO
17 COMMUNICATION, AT THE BEGINNING OF THE AUDIO COMMUNICATION, AT
18 THE END OF THE AUDIO COMMUNICATION, AND, IF THE AUDIO
19 COMMUNICATION IS GREATER THAN TWO MINUTES IN LENGTH,
20 INTERSPERSED WITHIN THE AUDIO COMMUNICATION AT INTERVALS OF NOT
21 MORE THAN ONE MINUTE EACH;

22
23 (III) THE METADATA OF THE COMMUNICATION INCLUDES THE
24 DISCLOSURE STATEMENT, THE IDENTITY OF THE TOOL USED TO CREATE THE
25 DEEPPFAKE, AND THE DATE AND TIME THE DEEPPFAKE WAS CREATED;

26 (IV) THE DISCLOSURE STATEMENT IN THE COMMUNICATION,
27 INCLUDING THE DISCLOSURE STATEMENT IN ANY METADATA, IS, TO THE

1 EXTENT TECHNICALLY FEASIBLE, PERMANENT OR UNABLE TO BE EASILY
2 REMOVED BY A SUBSEQUENT USER; [REDACTED]

3 (V) THE COMMUNICATION COMPLIES WITH ANY ADDITIONAL
4 REQUIREMENTS FOR THE DISCLOSURE STATEMENT THAT THE SECRETARY
5 OF STATE MAY ADOPT BY RULE TO ENSURE THAT THE DISCLOSURE
6 STATEMENT IS PRESENTED IN A CLEAR AND CONSPICUOUS AND
7 UNDERSTANDABLE MANNER; AND

8 (VI) IN A BROADCAST OR ONLINE VISUAL OR AUDIO
9 COMMUNICATION THAT INCLUDES A STATEMENT REQUIRED BY
10 SUBSECTION (2) OF THIS SECTION, THE STATEMENT SATISFIES ALL
11 APPLICABLE REQUIREMENTS, IF ANY, PROMULGATED BY THE FEDERAL
12 COMMUNICATIONS COMMISSION FOR SIZE, DURATION, AND PLACEMENT.

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

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

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

1 AUTHENTICITY OF THE DEEPFAKE IN THE COMMUNICATION;

2 (c) THIS SECTION DOES NOT APPLY TO A RADIO OR TELEVISION
3 BROADCASTING STATION, INCLUDING A CABLE OR SATELLITE TELEVISION
4 OPERATOR, PROGRAMMER, PRODUCER, OR STREAMING SERVICE, WHEN THE
5 STATION IS PAID TO BROADCAST A COMMUNICATION THAT INCLUDES A
6 DEEPFAKE;

7 (d) THIS SECTION DOES NOT APPLY TO AN INTERNET WEBSITE, OR
8 A REGULARLY PUBLISHED NEWSPAPER, MAGAZINE, OR OTHER PERIODICAL
9 OF GENERAL CIRCULATION, INCLUDING AN INTERNET OR ELECTRONIC
10 PUBLICATION OR STREAMING SERVICE, THAT ROUTINELY CARRIES NEWS
11 AND COMMENTARY OF GENERAL INTEREST AND THAT PUBLISHES A
12 COMMUNICATION THAT INCLUDES A DEEPFAKE PROHIBITED BY
13 SUBSECTION (1) OF THIS SECTION, IF THE PUBLICATION CLEARLY STATES
14 THAT THE COMMUNICATION THAT INCLUDES THE DEEPFAKE DOES NOT
15 ACCURATELY REPRESENT A CANDIDATE FOR ELECTIVE OFFICE; ==

16 (e) THIS SECTION DOES NOT APPLY TO MEDIA CONTENT THAT
17 CONSTITUTES SATIRE OR PARODY OR THE PRODUCTION OF WHICH IS
18 SUBSTANTIALLY DEPENDENT ON THE ABILITY OF AN INDIVIDUAL TO
19 PHYSICALLY OR VERBALLY IMPERSONATE THE CANDIDATE AND NOT UPON
20 GENERATIVE AI OR OTHER TECHNICAL MEANS;

21 (f) THIS SECTION DOES NOT APPLY TO THE PROVIDER OF
22 TECHNOLOGY USED IN THE CREATION OF A DEEPFAKE; AND

23 (g) THIS SECTION DOES NOT APPLY TO AN INTERACTIVE COMPUTER
24 SERVICE, AS DEFINED IN 47 U.S.C. SEC. 230 (f)(2), FOR ANY CONTENT
25 PROVIDED BY ANOTHER INFORMATION CONTENT PROVIDER AS DEFINED IN
26 47 U.S.C. SEC. 230 (f)(3).

27 (4) THE SECRETARY OF STATE SHALL PROMULGATE SUCH RULES,

1 IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, AS MAY BE NECESSARY TO
2 ADMINISTER AND ENFORCE ANY PROVISION OF THIS ARTICLE 46.

3 **1-46-104. Enforcement - administrative hearing.** ANY PERSON
4 WHO BELIEVES THAT A VIOLATION OF SECTION 1-46-103, OR THE
5 SECRETARY OF STATE'S RULES CONCERNING THE USE OF A DEEPPAKE IN A
6 COMMUNICATION CONCERNING A CANDIDATE FOR ELECTIVE OFFICE, HAS
7 OCCURRED MAY FILE A WRITTEN COMPLAINT WITH THE OFFICE IN
8 ACCORDANCE WITH SECTION 1-45-111.7 (2). SUCH COMPLAINT SHALL BE
9 REVIEWED AND ADJUDICATED IN ACCORDANCE WITH SECTION 1-45-111.7
10 AND THE SECRETARY OF STATE'S RULES FOR COMPLAINTS AND
11 ADMINISTRATIVE HEARINGS PURSUANT TO ARTICLE 45 OF THIS TITLE 1.

12 **1-46-105. Civil action - injunctive relief - damages.** (1) A
13 CANDIDATE WHOSE APPEARANCE, ACTION, OR SPEECH IS DEPICTED IN A
14 DEEPPAKE THAT IS INCLUDED IN A COMMUNICATION DISTRIBUTED IN
15 VIOLATION OF SECTION 1-46-103 MAY:

16 (a) SEEK INJUNCTIVE OR OTHER EQUITABLE RELIEF PROHIBITING
17 THE DISTRIBUTION, DISSEMINATION, PUBLICATION, BROADCAST,
18 TRANSMISSION, OR DISPLAY OF THE COMMUNICATION, AND PREVENTING
19 THE DEFENDANT FROM OTHERWISE FURTHER VIOLATING THIS ARTICLE 46;

20 (b) BRING AN ACTION FOR COMPENSATORY AND PUNITIVE
21 DAMAGES AGAINST THE PERSON THAT DISTRIBUTED, DISSEMINATED,
22 PUBLISHED, BROADCAST, TRANSMITTED, OR DISPLAYED THE
23 COMMUNICATION;

24 (c) SEEK REASONABLE ATTORNEY FEES, FILING FEES, AND COSTS
25 OF ACTION; AND

26 (d) SEEK ANY OTHER JUST AND APPROPRIATE RELIEF NECESSARY
27 TO ENFORCE THIS ARTICLE 46 AND REMEDY THE HARM CAUSED BY THE

1 VIOLATION OF SECTION 1-46-103.

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

5 (3) AN ACTION COMMENCED PURSUANT TO SUBSECTION (1)(a) OR
6 (1)(b) OF THIS SECTION DOES NOT LIMIT OR PRECLUDE A PLAINTIFF FROM
7 SECURING OR RECOVERING ANY OTHER AVAILABLE REMEDY, OR FROM
8 SEEKING TO INSTITUTE A CRIMINAL ACTION AGAINST THE DEFENDANT.

9 (4) IN ANY CIVIL ACTION ALLEGING A VIOLATION OF SECTION
10 1-46-103, THE PLAINTIFF BEARS THE BURDEN OF ESTABLISHING THE
11 VIOLATION BY CLEAR AND CONVINCING EVIDENCE.

12 **1-46-106. Limitation.** (1) NOTHING IN THIS ARTICLE 46 LIMITS OR
13 IMPAIRS IN ANY WAY THE RIGHT OF THE ATTORNEY GENERAL, OR ANY
14 PERSON OR ENTITY, TO PURSUE A LEGAL ACTION AGAINST A PERSON IN
15 CONNECTION WITH A DEEPFAKE PURSUANT TO ANY OTHER LAW, CAUSE OF
16 ACTION, TORT THEORY, OR OTHER AUTHORITY.

17 (2) NOTHING IN THIS ARTICLE 46, EXEMPTS A PERSON WHO
18 KNOWINGLY OR RECKLESSLY DISTRIBUTES, DISSEMINATES, PUBLISHES,
19 BROADCASTS, TRANSMITS, OR DISPLAYS A COMMUNICATION CONCERNING
20 A CANDIDATE FOR ELECTIVE OFFICE THAT INCLUDES A FALSE STATEMENT
21 THROUGH A DEEPFAKE FROM CRIMINAL LIABILITY IN ACCORDANCE WITH
22 SECTION 1-13-109, OR ANY OTHER APPLICABLE PROVISION OF LAW.

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

26 **SECTION 5. Safety clause.** The general assembly finds,
27 determines, and declares that this act is necessary for the immediate

1 preservation of the public peace, health, or safety or for appropriations for
2 the support and maintenance of the departments of the state and state
3 institutions.