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S.B. NO. 2687

A Bill for an Act Relating to Elections.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that although artificial intelligence (AI) technology can greatly benefit certain aspects of society, it can also have dangerous consequences if applied maliciously. For example, the use of deepfakes or generative AI in elections can be a powerful tool used to spread disinformation and misinformation, which can increase political tensions and result in electoral-related conflict and violence. Several states, including Michigan, Minnesota, and Washington, have enacted legislation governing the use of AI in elections. The legislature believes that regulating the use of deepfake and generative AI tech-

nologies to influence elections is necessary to protect the democratic process in the State.

Accordingly, the purpose of this Act is to:

- (1) Prohibit a person from recklessly distributing, or entering into an agreement with another person to distribute, materially deceptive media with exceptions;
- (2) Establish criminal penalties for distributing materially deceptive media; and
- (3) Establish remedies for parties injured by the distribution of materially deceptive media.

SECTION 2. Chapter 11, Hawaii Revised Statutes, is amended by adding two new sections to part XIII to be appropriately designated and to read as follows:

“§11-A Distribution of materially deceptive media; prohibited; penalties.

(a) Except as provided in subsections (b) and (c), no person shall recklessly distribute, or enter into an agreement with another person to distribute, between the first working day of February in every even-numbered year through the next general election, materially deceptive media in reckless disregard of the risk of harming the reputation or electoral prospects of a candidate in an election or changing the voting behavior of voters in an election.

(b) Subsection (a) shall not apply to:

- (1) A broadcaster, cable operator, or direct-to-home satellite provider unless it was involved in the creation of the materially deceptive media; or
- (2) An interactive computer service, cloud service provider, or streaming service for content provided by another person or a developer or provider of any technology used in the creation of materially deceptive media, unless the interactive computer service, cloud service provider, or streaming service has knowledge that the content is deceptive and intends to deceive a resident of the State.

(c) Subsection (a) shall not apply if the media includes a disclaimer informing the viewer that the media has been manipulated by technical means and depicts appearance, speech, or conduct that did not occur; provided that:

- (1) If the media is a video, the disclaimer shall:
 - (A) Appear throughout the entirety of the video;
 - (B) Be clearly visible to and readable by an observer;
 - (C) Be in letters at least as large as the largest size of any text communication; and
 - (D) Be in the same language as the language used in the video media;
- (2) If the media is an image, the disclaimer shall:
 - (A) Be clearly visible to and readable by the observer;
 - (B) Be in letters at least as large as the largest text in the image if the media contains other text; and
 - (C) Be in the same language as the language used in the image media;
- (3) If the media consists of only audio and contains no video or image, the disclaimer shall be read:
 - (A) At the beginning and end of the media in a clearly spoken manner;
 - (B) In a pitch that can be easily heard by the listener; and
 - (C) In the same language as the audio media; and

(4) If the media was generated by editing or creating new media from an existing video, image, or audio, the media shall include a citation directing the viewer or listener to the original sources from which the unedited version of the existing videos, images, or audios were obtained or generated.

(d) Unless otherwise specified in this section, a person who violates this section shall be guilty of a petty misdemeanor.

(e) A person who violates this section within five years of a previous conviction for a violation of this section shall be guilty of a misdemeanor.

(f) A person who violates this section with the intent to cause violence or bodily harm shall be guilty of a class C felony.

(g) The commission may assess a fine for a violation of this section or refer a violation of this section for criminal prosecution under subpart I.

(h) For the purposes of this section:

“Artificial intelligence” means a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments, and that uses machine and human-based inputs to:

- (1) Perceive real and virtual environments;
- (2) Abstract perceptions of real and virtual environments into models through analysis in an automated manner; and
- (3) Use model inference to formulate opinions for information or action.

“Cloud service provider” means a third-party company that provides scalable computing resources that businesses can access on demand over a network, including cloud-based computing, storage, platform, and application services.

“Direct-to-home satellite provider” has the same meaning as defined in title 47 United States Code section 303(v).

“Distribute” means to convey information by any means.

“Interactive computer service” has the same meaning as defined in title 47 United States Code section 230(f)(2).

“Materially deceptive media” means any information, including any video, image, or audio, that:

- (1) Is an advertisement;
- (2) Depicts an individual engaging in speech or conduct in which the depicted individual did not in fact engage;
- (3) Would cause a reasonable viewer or listener to believe that the depicted individual engaged in the speech or conduct depicted; and
- (4) Was created by:
 - (A) Generative adversarial network techniques or another technique that translates a source image into another image using machine learning, deep learning techniques, and convolutional neural networks;
 - (B) Artificial intelligence; or
 - (C) Digital technology.

§11-B Distribution of materially deceptive media; civil remedies. (a) A depicted individual, including a candidate for election, whose appearance, speech, or conduct is altered or affected through the use of materially deceptive media, or any organization that represents the interest of voters likely to be deceived by the distribution of materially deceptive media, may bring an action for general or special damages against a person who violates section 11-A.

The court, in its action and in addition to any judgment awarded to the plaintiff or plaintiffs, may award a prevailing party reasonable attorney’s fees

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and costs; provided that this subsection shall not limit or preclude a plaintiff from pursuing any other available remedy.

(b) A cause of action for injunctive or other equitable relief may be maintained against any person who is reasonably believed to violate or who is in the course of violating section 11-A by:

- (1) The attorney general;
- (2) The campaign spending commission;
- (3) A county attorney or county prosecutor;
- (4) The depicted individual;
- (5) A candidate for nomination or election to a public office who is injured or is likely to be injured by dissemination of materially deceptive media; or
- (6) Any organization that represents the interest of voters likely to be deceived by the distribution of materially deceptive media.

A court may issue a temporary or permanent injunction or restraining order to prevent further harm to the plaintiff. If a plaintiff, other than the attorney general, campaign spending commission if represented by a state attorney, county attorney, or county prosecutor, is awarded permanent injunctive relief under this subsection, the court may award reasonable attorney's fees and costs to the plaintiff.

The court may issue a civil fine for the violation of a court order issued under this subsection in an amount of not more than \$1,000 per day.

(c) For the purposes of this section:

“Distribute” has the same meaning as defined in section 11-A.

“Materially deceptive media” has the same meaning as defined in section 11-A.”

SECTION 3. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved July 3, 2024.)

Note

1. Edited pursuant to HRS §23G-16.5.