

# STATE OF NEW YORK

9816

## IN ASSEMBLY

April 9, 2024

Introduced by M. of A. BORES -- read once and referred to the Committee on Election Law

AN ACT to amend the election law, in relation to proceedings to prohibit the use of materially deceptive media in political communications

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "New York false AI representations act (New York FAIR Act)".

3 § 2. The election law is amended by adding a new section 16-119 to  
4 read as follows:

5 § 16-119. Materially deceptive media; proceedings. 1. For the  
6 purposes of this section, the term "materially deceptive media" means  
7 any image, audio or video of a candidate's appearance, speech, or  
8 conduct that has been intentionally manipulated, used for campaign  
9 purposes in a manner which:

10 (a) falsely depicts an individual engaging in speech or conduct in  
11 which the depicted individual did not in fact engage;

12 (b) a reasonable viewer or listener would incorrectly believe that the  
13 depicted individual engaged in the speech or conduct depicted; and

14 (c) is created by or with a machine-based system that, for explicit or  
15 implicit objectives, infers, from the input it receives, how to generate  
16 outputs such as predictions, content, recommendations, or decisions that  
17 can influence physical or virtual environments.

18 2. Any candidate depicted in materially deceptive media shall have a  
19 cause of action against such individual or entity who disseminated or  
20 published such media without the consent of the person depicted and who  
21 knew or should have known that it was materially deceptive.

22 3. In any action commenced pursuant to subdivision one of this  
23 section, the finder of fact, in its discretion, may award injunctive  
24 relief, punitive damages, compensatory damages and reasonable court  
25 costs and attorneys' fees.

26 4. A cause of action or special proceeding under this section shall be  
27 commenced within three years after the dissemination or publication of  
28 such media.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 5. In any action commenced under this section, the plaintiff bears the  
2 burden of establishing the use of materially deceptive media by clear  
3 and convincing evidence.

4 6. Because of the frequency of elections, the severe consequences and  
5 irreparable harm of holding elections under deceptive conditions,  
6 actions brought pursuant to this section shall be subject to expedited  
7 pretrial and trial proceedings and receive an automatic calendar prefer-  
8 ence. In any action alleging a violation of this section in which a  
9 plaintiff party seeks preliminary relief with respect to an upcoming  
10 election, the court shall grant relief if it determines that:

11 (a) plaintiffs are more likely than not to succeed on the merits; and

12 (b) it is possible to implement an appropriate remedy that would  
13 resolve the alleged violation in the upcoming election.

14 7. It shall be an affirmative defense for any action brought under  
15 this section that the materially deceptive media includes a disclosure  
16 stating, "This (image/video/audio) has been manipulated" in the follow-  
17 ing manner:

18 (a) for visual media, the text of the disclosure must appear in the  
19 same language and in a size easily readable by the average viewer and no  
20 smaller than the largest font size of other text appearing in the visual  
21 media. If the visual media does not include any other text, the disclo-  
22 sure must appear in a size that is easily readable by the average view-  
23 er. For visual media that is a video, the disclosure must appear for the  
24 duration of the video in the same language used in the video; or

25 (b) if the media consists of audio only, the disclosure must be read  
26 in a clearly spoken manner and in a pitch that can be easily heard by  
27 the average listener, at the beginning of the audio, at the end of the  
28 audio, and, if the audio is greater than two minutes in length, inter-  
29 persed within the audio at intervals of not more than two minutes each  
30 and in the same language as the rest of the audio.

31 8. (a) This section does not apply to a radio or television broadcast-  
32 ing station, including a cable or satellite television operator,  
33 programmer, or producer, that broadcasts a deceptive and fraudulent  
34 deepfake prohibited by this section as part of a bona fide newscast,  
35 news interview, news documentary, or on-the-spot coverage of bona fide  
36 news events, if the broadcast clearly acknowledges through content or a  
37 disclosure, in a manner that can be easily heard or read by the average  
38 listener or viewer, the materially deceptive audio or visual media does  
39 not accurately represent the speech or conduct of the candidate.

40 (b) This section does not apply to a radio or television broadcasting  
41 station, including a cable or satellite television operator, programmer,  
42 or producer, when it is paid to broadcast a deceptive and fraudulent  
43 deepfake and has made a good faith effort to establish that the  
44 depiction is not materially deceptive media.

45 (c) This section does not apply to an internet website, or a regularly  
46 published newspaper, magazine, or other periodical of general circu-  
47 lation, including an internet or electronic publication, that routinely  
48 carries news and commentary of general interest, and that publishes  
49 materially deceptive audio or visual media prohibited by this section,  
50 if the publication clearly states that the materially deceptive audio or  
51 visual media does not accurately represent the speech or conduct of the  
52 candidate.

53 (d) This section does not apply to materially deceptive audio or visu-  
54 al media that constitutes satire or parody.

55 9. Nothing in this section shall be construed to limit, or to enlarge,  
56 the protections that 47 U.S.C. § 230 confers on an interactive computer

1 service for content provided by another information content provider, as  
2 such terms are defined in 47 U.S.C. § 230.

3 § 3. If any provision of this section or its application to any person  
4 or circumstance is held invalid, the invalidity shall not affect other  
5 provisions or applications of this section which can be given effect  
6 without the invalid provision or application, and to this end the  
7 provisions of this section are severable.

8 § 4. This act shall take effect immediately.