STATE OF NEW YORK

8631

IN SENATE

February 23, 2024

Introduced by Sen. GONZALEZ -- read twice and ordered printed, and when printed to be committed to the Committee on Elections

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:

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

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

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

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

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

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

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

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

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

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

LBD14411-10-4

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

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

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

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

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

(a) for visual media, the text of the disclosure must appear in the same language and in a size easily readable by the average viewer and no smaller than the largest font size of other text appearing in the visual media. If the visual media does not include any other text, the disclosure must appear in a size that is easily readable by the average viewer. For visual media that is a video, the disclosure must appear for the duration of the video in the same language used in the video; or

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

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

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

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

(d) This section does not apply to materially deceptive audio or visual media that constitutes satire or parody.

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

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

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

§ 4. This act shall take effect immediately.