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Walsh
3/21/24

CS FOR HOUSE BILL NO. 358(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES CRONK, McCabe

A BILL

FOR AN ACT ENTITLED

"An Act relating to defamation claims based on the use of deepfakes; relating to child pornography; and relating to the use of deepfakes in electioneering communications."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** AS 09.65 is amended by adding a new section to read:

Sec. 09.65.360. Civil liability for defamation based on deepfakes. An action for defamation based on the use of a deepfake is a claim for defamation per se. In this section, "deepfake" has the meaning given in AS 15.80.009.

*** Sec. 2.** AS 11.61.127(a) is amended to read:

(a) A person commits the crime of possession of child pornography if the person knowingly possesses or knowingly accesses on a computer with intent to view any material that visually depicts conduct described in AS 11.41.455(a) knowing that the

(1) production of the material involved the use of a child under 18 years of age who engaged in the conduct or a depiction of a part of an actual child

under 18 years of age who, by manipulation, creation, or modification, appears to be engaged in the conduct; or

(2) material has been manipulated, created, or modified using artificial intelligence to appear to depict a child under 18 years of age engaging in the conduct and the depiction is recognizable as an identifiable actual child by the child's face, likeness, or other distinguishing characteristics.

* Sec. 3. AS 11.61.127(f) is amended to read:

(f) In this section,

(1) "artificial intelligence" means an automated system that uses data input, human-defined objectives, and machine learning, natural language processing, or other computational processing techniques of similar or greater complexity to make a decision or facilitate human decision making;

(2) "computer" has the meaning given in AS 11.46.990.

* Sec. 4. AS 15.80 is amended by adding a new section to read:

Sec. 15.80.009. Deepfakes in electioneering communications. (a) A person may not use a deepfake in an electioneering communication made with the intent to influence an election.

(b) An individual whose speech, conduct, or likeness is manipulated in a deepfake in violation of this section may bring an action in the superior court to recover damages, full reasonable attorney fees, and costs from

(1) the person who created the deepfake or retained the services of another to create the deepfake; or

(2) a person who removes a disclosure statement described in (d) of this section from an electioneering communication.

(c) An individual whose speech, conduct, or likeness is manipulated in a deepfake in violation of this section may seek injunctive relief in the superior court to prohibit publication of the deepfake.

(d) It is a defense to an action under this section that the electioneering communication included the following disclosure statement: "This (image/video/audio) has been manipulated." and

(1) for visual media that included other text, the text of the disclosure

statement remained visible throughout the entirety of the communication, was easily readable by the average viewer, and was in a font not smaller than the largest font size of any other text that appeared in the visual component;

(2) for visual media that did not include any other text, the disclosure statement was in a font size that was easily readable by the average viewer;

(3) for a communication that consisted of only audio, the disclosure statement was read

(A) at the beginning of the audio, at the end of the audio, and, if the audio was longer than two minutes in duration, at intervals interspersed within the audio that occurred at least once every two minutes; and

(B) in a clear manner and in a pitch that was easily heard by the average listener.

(e) An individual may not bring an action under this section against an interactive computer service for an electioneering communication provided by another information content provider. This subsection does not prevent an individual from bringing an action against an interactive computer service under (b)(2) of this section for removing a disclosure statement.

(f) In this section,

(1) "artificial intelligence" means an automated system that uses data input, human-defined objectives, and machine learning, natural language processing, or other computational processing techniques of similar or greater complexity to make a decision or facilitate human decision making;

(2) "deepfake" means any visual or audio media that is created, altered, or otherwise manipulated by artificial intelligence in a manner that

(A) to a reasonable observer, appears to be an authentic record of an individual's actual speech, conduct, or likeness; and

(B) conveys a fundamentally different understanding or impression of the individual's appearance, action, or speech than a reasonable person would have from the unaltered, original version of the individual's appearance, action, or speech;

(3) "electioneering communication" means a communication that

1 (A) directly or indirectly identifies a candidate or political
2 party;

3 (B) is disseminated through a mailing, a newspaper, the
4 Internet, or broadcast media, including radio, television, cable, or satellite, to
5 an audience that includes voters who will have the opportunity to vote on a
6 candidate identified in the communication or on a candidate of a party
7 identified in the communication; and

8 (C) when read as a whole and with limited reference to outside
9 events, is susceptible of no other reasonable interpretation but as an
10 exhortation to vote for or against a specific candidate;

11 (4) "information content provider" and "interactive computer service"
12 have the meanings given in 47 U.S.C. 230.

13 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

15 APPLICABILITY. AS 11.61.127(a), as amended by sec. 2 of this Act, and
16 AS 11.61.127(f), as amended by sec. 3 of this Act, apply to offenses committed on or after the
17 effective date of this Act.