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Walsh
4/23/24

CS FOR SENATE BILL NO. 177(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

**Offered:
Referred:**

Sponsor(s): SENATOR HUGHES

A BILL

FOR AN ACT ENTITLED

"An Act relating to disclosure of election-related deepfakes; relating to use of artificial intelligence by state agencies; and relating to transfer of data about individuals between state agencies."

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

*** Section 1.** AS 15.80 is amended by adding a new section to read:

Sec. 15.80.009. Deepfake disclosure requirement. (a) A person may not make or retain the services of another to make an election-related communication that the person knows or reasonably should know includes a deepfake relating to a candidate or proposition without including the following disclosure statement with the election-related communication: "This communication has been manipulated or generated by artificial intelligence or by another means." If the election-related communication includes a print or video component, the statement must be placed in the election-related communication so the statement is easily discernible, and, for a broadcast, cable, satellite, Internet, or other digital communication, the statement must

1 remain onscreen throughout the entirety of the election-related communication. In an
2 election-related communication that consists only of audio, the statement must be read

3 (1) at the beginning of the audio, at the end of the audio, and, if the
4 audio is longer than two minutes in duration, at least once every two minutes during
5 the audio; and

6 (2) in a manner that is easily heard.

7 (b) A person may not remove the disclosure statement described in (a) of this
8 section from an election-related communication that the person knows or reasonably
9 should know includes a deepfake.

10 (c) A person who violates (a) or (b) of this section is liable to a candidate or
11 proposition group for damages suffered as a result of the violation, full reasonable
12 attorney fees, and costs.

13 (d) A candidate or proposition group suffering damages as a result of an
14 election-related communication made in violation of (a) of this section, or the removal
15 of the disclosure statement from an election-related communication in violation of (b)
16 of this section, may bring an action for damages under (c) of this section, or for
17 injunctive relief to prohibit dissemination of the election-related communication.

18 (e) This section does not apply to

19 (1) a deepfake that constitutes satire or parody;

20 (2) a deepfake broadcast by a radio, television, cable, or satellite
21 provider as part of a newscast, news interview, news documentary, or on-the-spot
22 coverage of a news event, if the broadcast clearly acknowledges, through content or
23 disclosure, in a manner easily heard or read by the average listener or viewer, that
24 there are questions about the authenticity of the deepfake;

25 (3) a person who is paid to broadcast an election-related
26 communication made by another person.

27 (f) In this section,

28 (1) "deepfake" means an image, audio recording, or video recording of
29 an individual's appearance, conduct, or spoken words that has been created or
30 manipulated with machine learning, natural language processing, or another
31 computational processing technique in a manner to create a realistic but false image,

audio, or video that

(A) appears to a reasonable person to depict a real individual saying or doing something that did not actually occur; or

(B) provides a fundamentally different understanding or impression of an individual's appearance, conduct, or spoken words than the understanding a reasonable person would have from an unaltered, original version of the media;

(2) "election-related communication" means a communication that

(A) directly or indirectly identifies a candidate or proposition; and

(B) is disseminated to an audience that includes voters who will have the opportunity to vote on the candidate or proposition identified in the communication;

(3) "proposition" has the meaning given in AS 15.13.065(c);

(4) "proposition group" means a person registered with the Alaska Public Offices Commission to make expenditures in support of or in opposition to a proposition under AS 15.13.050.

* **Sec. 2.** AS 44.99 is amended by adding new sections to read:

Article 7. Use by State Agencies of Artificial Intelligence and Data about Individuals.

Sec. 44.99.700. Inventory. (a) Every two years, the department shall conduct an inventory of all systems used by state agencies that employ generative artificial intelligence for consequential decisions. Each state agency shall assist the department as necessary. An inventory must include, at a minimum, the following information for each system:

(1) the name of the system;

(2) the vendor that provides the system, if any;

(3) a description of the general capabilities and uses of the system;

(4) whether the state agency completed an impact assessment of the system under AS 44.99.710 before the system's implementation; and

(5) the date of completion of the most recent state agency impact assessment of the system under AS 44.99.710.

(b) The department shall remove from the inventory a system that is no longer used by a state agency.

(c) The department shall publish each inventory on the department's Internet website, except as provided in AS 44.99.760.

Sec. 44.99.710. Impact assessments. (a) At least once every two years, the head of a state agency that uses a system that employs generative artificial intelligence for consequential decisions shall conduct an impact assessment of the system, except as provided in AS 44.99.760. An impact assessment must include, at a minimum, an analysis of

- (1) the efficacy of the system;
- (2) the human oversight involved in the system;
- (3) the accountability mechanisms in place for the system;
- (4) the process by which an individual may appeal a decision made or facilitated by the system;
- (5) the current and potential benefits, liability, and risks to the state from the system, including risks related to cybersecurity and intellectual property and any measures used to mitigate liability and risks;
- (6) the current and potential effects of the system on the liberty, finances, livelihood, and privacy interests of individuals in the state, including effects from any use of geolocation data by the system;
- (7) any unlawful discrimination against or unlawful disparate impact on an individual or a group of individuals that has resulted or may result from the system; and
- (8) the policies and procedures that govern the process of using the system for consequential decisions.

(b) A state agency that completes an impact assessment shall provide the assessment to the department, and the head of the agency shall consult with the commissioner of administration to determine future use of the system by the agency.

Sec. 44.99.720. Requirements for use of artificial intelligence by state agencies. (a) Except as provided in AS 44.99.760, a state agency that uses a system that employs generative artificial intelligence for consequential decisions shall

(1) notify each individual who may be legally or significantly affected by the use of the system;

(2) obtain an individual's consent before soliciting or acquiring sensitive personal data from or about the individual that will be used by the system;

(3) provide an appeals process that includes manual human review for an individual who is legally or significantly affected by the use of the system; and

(4) inform a prospective employee of the state agency about any video interview that involves the use of generative artificial intelligence and obtain the prospective employee's consent before employing generative artificial intelligence.

(b) A state agency may not use a system that employs artificial intelligence for consequential decisions if the system involves

(1) biometric identification, including facial recognition;

(2) emotion recognition;

(3) cognitive behavioral manipulation of individuals or groups; or

(4) social scoring.

(c) A state agency may not use a system that employs artificial intelligence for consequential decisions if the system uses data hosted in a country designated by regulation as a foreign adversary.

(d) A state agency may contract with a person for a system that employs artificial intelligence for consequential decisions only if the person has implemented security and privacy controls as specified by the National Institute of Standards and Technology in Special Publication 800-53, Revision 5, published in September 2020 or in regulations adopted by the department designating a publication revising or superseding Special Publication 800-53.

Sec. 44.99.730. Transfer of data between state agencies. Except as provided in AS 44.99.760 and unless required by law, a state agency may not transfer data about an individual to another state agency without giving notice to the individual.

Sec. 44.99.740. Regulations. (a) The department shall adopt regulations under AS 44.62 (Administrative Procedure Act) concerning the development, procurement, implementation, use, and ongoing assessment of systems that employ generative artificial intelligence by state agencies for consequential decisions. Except as provided

in AS 44.99.760, the regulations must include, at a minimum, provisions that

(1) govern the procurement, implementation, and ongoing assessment of each system;

(2) require a state agency to conduct an impact assessment of each system under AS 44.99.710 before its implementation;

(3) ensure that a system does not result in unlawful discrimination or an unlawful disparate impact on an individual or a group of individuals;

(4) provide for the ongoing assessment of each system; and

(5) designate countries that constitute foreign adversaries, considering determinations made by the United States.

(b) The department may adopt additional regulations under AS 44.62 (Administrative Procedure Act) necessary to implement AS 44.99.700 - 44.99.730.

Sec. 44.99.750. Civil liability for harm. (a) An individual who suffers harm as a result of a violation of AS 44.99.700 - 44.99.730, a violation of a regulation adopted under AS 44.99.740, or gross negligence or reckless or intentional misconduct relating to the use of artificial intelligence by a state agency may bring a civil action in the superior court against the state agency.

(b) An individual who suffers harm under (a) of this section may recover damages for the harm to the individual, punitive damages under AS 09.17.020, and full reasonable attorney fees and costs in a civil action brought under this section.

(c) Nothing in this section authorizes an individual to bring a cause of action against a person other than a state agency.

Sec. 44.99.760. Exemptions. (a) AS 44.99.710, 44.99.720(a), 44.99.720(b)(1), 44.99.730, and regulations adopted under AS 44.99.740(a) do not apply to systems that the Department of Public Safety uses for investigation of criminal offenses, missing persons, or other exigent circumstances.

(b) Information collected under AS 44.99.700(a)(3) related to a system that the Department of Public Safety uses for investigation of criminal offenses, missing persons, or other exigent circumstances may not be included in the inventory published on the department's Internet website under AS 44.99.700(b) and is confidential and not subject to disclosure under AS 40.25.100 - 40.25.295 (Alaska

Public Records Act).

Sec. 44.99.770. Definitions. In AS 44.99.700 - 44.99.770,

(1) "artificial intelligence" means generative artificial intelligence or rules-based artificial intelligence;

(2) "biometric identification" means the analysis of an individual's physical or behavioral characteristics to uniquely identify the individual;

(3) "cognitive behavioral manipulation" means the use of a subliminal technique for the purpose of influencing an individual's behavior to achieve a desired outcome;

(4) "consequential decision" means a conclusion, decision, or judgment by a state agency that can affect an individual's legal rights, employment, finances, health, or licensure;

(5) "department" means the Department of Administration;

(6) "emotion recognition" means the analysis of an individual's bodily expressions, including facial and verbal expressions, to identify or predict the individual's emotions;

(7) "generative artificial intelligence" means a machine-based system designed to operate with varying levels of autonomy that may exhibit adaptiveness after deployment and that, for explicit or implicit objectives, infers how to generate outputs from input the system receives;

(8) "individual" means a natural person;

(9) "rules-based artificial intelligence" means a computational program or algorithm designed to process information in a logical way that does not produce inferential output beyond its original programming and query parameters;

(10) "sensitive personal data" means

(A) data that reveals an individual's racial or ethnic origin, political opinions, or religious or philosophical beliefs;

(B) an individual's genetic data;

(C) an individual's biometric data when used for biometric identification;

(D) an individual's geolocation data;

(E) an individual's bank account information or financial records; or

(F) an individual's social security number or other personal identifier issued to an individual by a government or institution;

(11) "social scoring" means evaluating, classifying, rating, or scoring the trustworthiness or social standing of an individual based on behavior or socioeconomic, political, or religious status;

(12) "state agency" means the University of Alaska, a public corporation of the state, or a department, institution, board, commission, division, authority, committee, or other administrative unit of the executive branch of state government.

* **Sec. 3.** The uncoded law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. AS 44.99.750, enacted by sec. 2 of this Act, applies to acts or omissions occurring on or after the effective date of this Act.