

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

May 11, 2024

10:02 a.m.

**MEMBERS PRESENT**

Senator Matt Claman, Chair  
Senator Jesse Kiehl, Vice Chair  
Senator Löki Tobin

**MEMBERS ABSENT**

Senator James Kaufman  
Senator Cathy Giessel

**COMMITTEE CALENDAR**

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 358(2D JUD)

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

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 358

SHORT TITLE: DEEPFAKES: LIABILITY; ELECTIONS

SPONSOR(S): REPRESENTATIVE(S) CRONK

02/20/24	(H)	READ THE FIRST TIME - REFERRALS
02/20/24	(H)	JUD
03/13/24	(H)	JUD AT 1:00 PM GRUENBERG 120
03/13/24	(H)	Heard & Held
03/13/24	(H)	MINUTE(JUD)
03/15/24	(H)	JUD AT 1:00 PM GRUENBERG 120
03/15/24	(H)	Heard & Held
03/15/24	(H)	MINUTE(JUD)
03/20/24	(H)	JUD AT 1:00 PM GRUENBERG 120
03/20/24	(H)	<Bill Hearing Canceled>
03/22/24	(H)	JUD AT 1:00 PM GRUENBERG 120
03/22/24	(H)	Heard & Held
03/22/24	(H)	MINUTE(JUD)
03/25/24	(H)	JUD AT 1:00 PM GRUENBERG 120
03/25/24	(H)	Heard & Held

03/25/24	(H)	MINUTE (JUD)
03/27/24	(H)	JUD AT 1:00 PM GRUENBERG 120
03/27/24	(H)	Heard & Held
03/27/24	(H)	MINUTE (JUD)
04/01/24	(H)	JUD AT 1:00 PM GRUENBERG 120
04/01/24	(H)	Heard & Held
04/01/24	(H)	MINUTE (JUD)
04/03/24	(H)	JUD AT 1:00 PM GRUENBERG 120
04/03/24	(H)	Moved CSHB 358 (JUD) Out of Committee
04/03/24	(H)	MINUTE (JUD)
04/08/24	(H)	JUD RPT CS (JUD) NEW TITLE 6DP
04/08/24	(H)	DP: GRAY, CARPENTER, GROH, SUMNER, ALLARD, VANCE
04/29/24	(H)	RETURNED TO JUD COMMITTEE
05/01/24	(H)	JUD AT 1:00 PM GRUENBERG 120
05/01/24	(H)	Moved CSHB 358 (2D JUD) Out of Committee
05/01/24	(H)	MINUTE (JUD)
05/02/24	(H)	JUD RPT CS (2D JUD) NEW TITLE 4DP 1AM
05/02/24	(H)	DP: GRAY, CARPENTER, ALLARD, SUMNER
05/02/24	(H)	AM: VANCE
05/02/24	(H)	RETURNED TO RLS COMMITTEE
05/09/24	(H)	TRANSMITTED TO (S)
05/09/24	(H)	VERSION: CSHB 358 (2D JUD)
05/10/24	(S)	READ THE FIRST TIME - REFERRALS
05/10/24	(S)	JUD
05/11/24	(S)	JUD AT 10:00 AM BUTROVICH 205

**WITNESS REGISTER**

DAVE STANCLIFF, Staff  
 Representative Mike Cronk  
 Alaska State Legislature  
 Juneau, Alaska

**POSITION STATEMENT:** Introduced HB 358 on behalf of the sponsor and delivered the sectional analysis.

ROBERT BALLINGER, Staff  
 Representative Sarah Vance  
 Alaska State Legislature  
 Juneau, Alaska

**POSITION STATEMENT:** Answered questions during the discussion of HB 358.

**ACTION NARRATIVE**

[10:02:49 AM](#)

**CHAIR MATT CLAMAN** called the Senate Judiciary Standing Committee meeting to order at 10:02 a.m. Present at the call to order were Senators Kiehl, Tobin, and Chair Claman.

**HB 358-DEEPPAKES: LIABILITY; ELECTIONS**

[10:03:26 AM](#)

CHAIR CLAMAN announced the consideration of CS FOR HOUSE BILL NO. 358(2d JUD) "An Act relating to defamation claims based on the use of deepfakes; and relating to the use of deepfakes in electioneering communications."

CHAIR CLAMAN said this is the first hearing of HB 358 in the Senate Judiciary Committee. He invited Mr. Stancliff to put himself on the record and begin his presentation.

[10:04:01 AM](#)

DAVE STANCLIFF, Staff, Representative Mike Cronk, Alaska State Legislature, Juneau, Alaska, introduced HB 358 on behalf of the sponsor as paraphrased below:

The term commonly understood and currently used to describe artificial intelligence (AI) identity abuse is *deepfake*. HB 358 is drafted to protect an individual's voice or image identity from being changed or manipulated without permission through the use of AI-generated deepfakes. The bill defines what a deepfake is and sets prohibitions on certain uses, including electioneering communications.

HB 358 establishes a civil threshold for cause of action when deepfake causes harm. It exempts certain parties from liability under specific circumstances. For instance, if a social media company searches for and identifies deepfake content, it is not held responsible for merely possessing the material.

HB 358 and its definitions set forth the current language needed to support this new area of law in state statutes. This language was adopted from federal and state sources. Deepfake technology is evolving so fast, it is difficult to keep up with the terms used to describe both the use and misuse of AI.

[10:05:46 AM](#)

MR. STANCLIFF presented the sectional analysis for HB 358 version D, CSHB 358(2d JUD):

[Original punctuation provided.]

**Sectional for HB 358 (33-LS1272\D)**

**Section 1.**

Amends AS 09.65 by adding a new section AS 09.65.360 which establishes that defamation based on the **use of a deepfake is a claim for defamation per se.**, meaning it is presumed to be damaging to a person's reputation without any additional proof of harm.

**Section 2.**

Amends AS 15.80 to include a new section AS 15.80.009 (Deepfakes in electioneering communications) to prohibit a person from knowingly using a "deepfake" in a campaign material. It provides that an individual who is harmed by such behavior may bring an action to recover damages, attorney fees, costs, or an injunction against the person who created, disseminated, or removed a disclosure. It does allow the use of altered material if it is disclosed as material that has been manipulated.

[10:06:53 AM](#)

MR. STANCLIFF said an advertisement recently aired showing a reel of President Biden appearing to speak on a Fairbanks tax issue, but it was not actually him. He emphasized how easily and cheaply artificial intelligence (AI) can alter video, noting that a voice can be changed in 20 minutes for under \$10. He stated that Representative Cronk introduced HB 358 as a basic bill to begin addressing this emerging area of law in Alaska, with the intent that it be built upon. He noted that two other complex measures are also before the legislature. HB 358 received detailed debate in the House Judiciary Committee. It is a nonpartisan bill with majority and minority support.

[10:08:30 AM](#)

SENATOR TOBIN commented that there appears to be a grammatical error on page 2, line 13, where a period is followed by a lowercase "and," despite the apparent intent to introduce a list of numbered items 1, 2, and 3. She flagged the potential error for correction if the committee prepares a substitute version of the bill.

MR. STANCLIFF said he would contact legislative legal so they can correct it if necessary.

[10:09:32 AM](#)

SENATOR TOBIN said HB 358 does not include an effective date. She asked whether the bill would take effect this year if passed. She noted that without an effective date, it would become law 90 days after passage.

MR. STANCLIFF replied that the intent of HB 358 is to protect against and end, as quickly as possible, the temptation to distort images in this year's upcoming election.

[10:10:07 AM](#)

CHAIR CLAMAN said Senator Tobin's question is whether the bill sponsor prefers to amend HB 358 to include an effective date.

MR. STANCLIFF replied that if it were the will of the committee, his office would support any effective date that puts HB 358 into effect as soon as possible.

[10:10:43 AM](#)

SENATOR TOBIN asked how HB 358 addresses the use of AI for political satire. She expressed concern about potential liability for individuals whose material might be used for nefarious purposes.

MR. STANCLIFF deferred the question to Mr. Ballinger, an attorney that did most of the drafting of HB 358.

[10:11:50 AM](#)

CHAIR CLAMAN confirmed that Mr. Ballinger is staff to Representative Vance.

MR. STANCLIFF replied yes.

[10:11:54 AM](#)

CHAIR CLAMAN directed the question to Mr. Ballinger.

[10:12:06 AM](#)

ROBERT BALLINGER, Staff, Representative Sarah Vance, Alaska State Legislature, Juneau, Alaska, answered questions during the discussion of HB 358. He replied that the original language from the bill in Washington, D.C. prohibited the use of deepfakes in elections or communications when done knowingly with the intent to influence an election. He explained that if satire is used with the intent to influence an election, it would fall under the prohibition. However, if satire is used purely for humor, it would not be prohibited. He added that if someone is concerned

their satire might be interpreted as election-related, they can include a disclosure and still proceed without liability.

[10:13:28 AM](#)

SENATOR TOBIN gave the example of a popular political blogger who operates in the space between news and satire, noting that some may assume the blogger is trying to influence an election, even if that is not the intent. She asked how courts interpret the definition of intent in such cases.

[10:13:57 AM](#)

MR. BALLINGER replied that determining intent would depend on the facts presented, including what was said, what actions were taken, when they occurred, and the content of the image. He stated that this evidence would be considered by a judge or jury to assess intent. He added that if he were representing the blogger, he would advise including a disclosure on the video or image.

[10:14:38 AM](#)

CHAIR CLAMAN said satire presents a complex issue. He pointed to the New York Times, which often lists what comedians said the night before, and noted that at least five times a week there is commentary about candidates—frequently former President Trump and current President Biden. He stated that while the primary purpose of satire is to be humorous and offer commentary, it is difficult to argue that such content does not influence elections. He questioned how to protect satire as a form of expression when someone might sue a comedian for influencing an election by discussing topics like former President Trump's trial, even if the intent was not to sway voters.

[10:16:04 AM](#)

MR. BALLINGER replied that even if there were an attempt to prohibit that type of speech, it would be protected under the First Amendment right to free speech. He clarified that HB 358 specifically targets the use of deepfakes. He cited the definition of "deepfake" in HB 358, page 3, line 14, as any visual or audio media that is created, altered, or otherwise manipulated by artificial intelligence in a manner that to a reasonable observer, appears to be an authentic record of an individual's actual speech, conduct, or likeness; and 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.]

[10:16:42 AM](#)

CHAIR CLAMAN asked what would happen if a comedian created a deepfake and included it in a comedy show.

[10:16:55 AM](#)

MR. BALLINGER replied that if a deepfake is shown on a comedy show, most people would not interpret it as an attempt to influence politics. However, if the same content appears in a different context—particularly with a skilled impersonator—the question becomes whether artificial intelligence (AI) was used to create it, which is a requirement under HB 358. He stated that if the content appears realistic enough that someone could reasonably believe it was intended to influence an election, the recommendation is to include a disclosure. He said although it is about protecting candidates it is more about preventing the public from being deceived.

[10:18:24 AM](#)

SENATOR TOBIN said she agreed that the public should have accurate information to make informed voting decisions. She asked about the disclosure requirements for deepfakes, noting that HB 358 does not include prescriptive measures such as font size or notice placement. She expressed concern that without such details, certain groups—like the visually impaired—may have difficulty noticing the disclosure.

MR. BALLINGER responded that the concern is legitimate. He explained that the disclosure font size must match the largest font size used in the image. If no font is used in the content, the disclosure must be in a reasonable size that viewers can see.

[10:20:14 AM](#)

SENATOR TOBIN raised concern about the duration a disclosure statement must remain visible on an image and reiterated the importance of including guardrails to ensure effective communication of the disclosure.

[10:20:38 AM](#)

SENATOR KIEHL asked whether the language regarding the disclosure requirements was borrowed from another source. He asked if the language used in HB 358 is the same language that governs ads such as car commercials.

MR. BALLINGER replied that the disclosure language originated from Washington state legislation and was later modified by the House Judiciary Committee. He stated that most of the language

remains the same as Washington State's, including the wording of the disclosure statement.

[10:21:22 AM](#)

SENATOR KIEHL said it would be helpful to know whether the disclosure statement requirements align with those seen in national television ads, which are often difficult to read without recording and pausing the ad. He expressed a desire for assurance that the disclosure language in HB 358 is reasonable. He then asked whether the legislation differentiates between a person manipulating an image for their own benefit versus someone else manipulating an image to that person's detriment, or if both scenarios are treated the same under the bill's requirements.

MR. BALLINGER replied it is treated the same. There was a variation of the legislation that applied only if someone manipulated someone else's image, but the bill now covers manipulating any image with the intent to cause harm, which would be considered a deepfake.

[10:22:36 AM](#)

SENATOR KIEHL said that the focus on protecting the public rather than the candidates is a positive aspect.

SENATOR KIEHL asked about the provision in the legislation that provides immunity to those who post or broadcast deepfake content, except in cases where disclaimers are removed. He noted that the standard used is "knowingly" and questioned why television broadcasters, radio stations, and internet service providers are not held to the same standard. He suggested they should not be subject to liability if they are unknowingly duped, but should be held accountable if they knowingly distribute a deepfake without the required disclaimer.

MR. BALLINGER stated his belief that there is no reason such a change could not be made. He noted that much of the language came from TechNet and that similar language was mentioned. He said the bill sponsor's opinion would be necessary but adding that language would not alter the structure or intent of the legislation.

[10:24:20 AM](#)

SENATOR TOBIN asked about the reference to private communication in HB 358, page 3, line 25. She inquired how "audience" and "internet" are defined, using the example of creating a deepfake and sending it to a group of friends. She questioned whether she

would still be covered under the private communication exemption if the deepfake was shared beyond her control.

MR. BALLINGER replied that if the creation and distribution of the image were done with the intent to affect an election, it would qualify as the use of a deepfake and could lead to liability and potential damages. However, if the image was shared privately among friends with a clear statement that it was fake, it would not be reasonable to assume intent to influence an election. He added that if a person intended for their friends to believe the image was real, there could be liability.

[10:25:39 AM](#)

SENATOR TOBIN said that with the discussion of liability and damages, she found it notable that HB 358 has a zero fiscal note. She questioned how the bill accounts for the creation of a new section of law, potential training for investigators, and funding to conduct investigations, expressing curiosity about how those needs are addressed.

MR. BALLINGER stated that no new investigator would be needed because the actions outlined in the legislation are civil in nature and do not involve any criminal enforcement.

[10:26:26 AM](#)

SENATOR KIEHL said he had a technical question regarding definitions in HB 358, referring to page 3, lines 17 and 19, and asked about the terms "conduct" and "action." He stated he suspects the intent is to refer to representations of physical activity or behavior. He then asked whether the language could apply to a political ad that misrepresents a legislator's vote. For example, if Representative X voted differently on a food benefit for children and an ad with a digital element claimed that Representative X "stole food from the mouths of needy children," he questioned whether that could be considered a misrepresentation of conduct or action.

MR. BALLINGER replied that the scenario is a bit of a stretch because, under HB 358, a person would first need to manipulate an image in a way that makes it appear fundamentally different from what it originally was. He said the bill is unlikely to apply to the expression of ideas alone. However, if an image of a legislator stating, "There is nothing more important to me than taking care of kids," is manipulated to say, "Feeding kids means nothing to me," the legislation would clearly apply. He

added that if the committee believes clarification is needed, additional language could be included.

[10:28:53 AM](#)

SENATOR KIEHL said that as he reviews HB 358, page 3, lines 14-21, the definition of deepfake includes any audio media created by artificial intelligence that appears to a reasonable observer to be an authentic record of an individual's conduct and conveys a fundamentally different understanding of the individual's action. He opined that if the intent is to target physical conduct or action, the bill may need to account for scenarios such as using AI software to display a fake vote board or a real image of a person in an ad. He acknowledged that while such actions are deplorable, they are still protected speech.

MR. BALLINGER quoted lines 19-21 of HB 358: "...a reasonable person would have from the unaltered, original version of the individual's appearance, action, or speech," and stated that a deepfake, by definition, requires manipulation of appearance, action, or speech. He suggested that "action" in this context could possibly be interpreted to include votes but acknowledged uncertainty about whether a court would agree with that interpretation.

[10:30:38 AM](#)

CHAIR CLAMAN asked for confirmation that HB 358 creates a private right of action, allowing an individual to sue another person over the use of a deepfake.

MR. BALLINGER replied yes.

CHAIR CLAMAN said that by passing HB 358—whether amended or not—the legislation establishes a private right of action, meaning individuals can file lawsuits over deepfakes without state involvement unless the law is significantly changed to include criminal enforcement. He stated that a person with a claim would need to find a lawyer willing to pursue a case for alleged damages caused by the publication of a deepfake. He asked whether, during the House hearing, there was any discussion about what types of damages could be demonstrated in such cases. He noted the practical concern that plaintiffs would likely need to present a strong damage claim to attract legal representation on a contingency fee basis, unless they had the financial means to pay an attorney by the hour.

[10:31:56 AM](#)

MR. BALLINGER replied that legal billings for such cases would likely be hourly. He said he does not expect many attorneys to

take these cases on a contingency basis unless the case is significant, such as one involving a gubernatorial race with higher potential damages. For a state representative race, while damages could be demonstrated, they would likely be minimal. As a result, individuals would probably need to pay an attorney by the hour.

[10:32:39 AM](#)

CHAIR CLAMAN asked, if the legislation is passed, wouldn't it effectively mean that only individuals with substantial resources would be able to meaningfully pursue claims. He stated that the average person would likely be unable to bring a case due to the high cost, potentially requiring tens of thousands of dollars to pursue a claim.

MR. BALLINGER replied yes, it would likely be individuals with a vested interest who are willing to invest in bringing a claim. He noted that successful plaintiffs could recover attorney's fees and damages. If the case is clear, it may be worth pursuing, particularly for candidates. However, he added that a private citizen who feels wronged by a deepfake could also file a claim. He concluded that unless the case involves clear and significant damages, it would be similar to other cases where people must decide whether pursuing justice is worth the financial investment.

[10:33:49 AM](#)

SENATOR TOBIN said she is thinking along the same lines, expressing concern for Alaska's citizen legislature, school board members, city council members, and others who may be targeted by deepfakes without meaningful recourse. She noted that those individuals are not paid a high enough salary to afford pursuing civil penalties. She asked what the penalty structure looks like in other states, such as Washington.

[10:34:37 AM](#)

MR. BALLINGER recollected that the language in Washington is very similar, granting the right to file a civil lawsuit. He said there are surely other versions of bills that establish specific penalties. He opined that if a candidate engaged in creating or distributing a deepfake, it could also result in an ethics complaint. Ultimately, he stated that the goal is for the threat of being sued over a deepfake to serve as a deterrent—similar to how defamation laws function. He added that HB 358 creates a legal framework where deepfakes are treated as a form of defamation for which civil action can be taken.

[10:35:32 AM](#)

CHAIR CLAMAN stated his belief that what motivates people to be truthful is not the threat of a defamation lawsuit, but rather their inherent goodwill and sense of justice.

MR. BALLINGER replied he hopes that is true.

CHAIR CLAMAN said the question of damages is important, noting that two members of the committee previously worked as legislative staff before running for office. He raised the scenario in which HB 358 is in effect, and Candidate Kiehl loses an election after a deepfake appears late in the campaign. If Candidate Kiehl files a lawsuit against the publisher, and the person acknowledges the deepfake but argues that he suffered no damages because he can return to a better-paying legislative staff position, it raises the issue of how damages would be proven in such a case.

MR. BALLINGER replied that is a legitimate concern.

[10:36:54 AM](#)

MR. STANCLIFF commented that these types of questions arise during a good legislative process. He expressed hope that, like all laws, once enacted, this legislation would serve as a preventative barrier. He also addressed the issue of free speech, referencing a House amendment where the sponsor indicated a willingness to eliminate the disclaimer provision altogether, stating that no disclaimer would protect someone from liability. He stated his belief that the amendment failed due to concerns over free speech. He explained that the intent was to allow individuals creating deepfakes to take responsibility by disclosing their identity. He acknowledged the fine line involved in balancing these concerns and noted that if HB 358 becomes law, it would be just a beginning—a new section of statute that can be amended and expanded. He concluded by saying that the bill's deterrent effect could grow through public awareness, ongoing discussion, media attention, and the increasing presence of deepfakes in news reels.

[10:38:46 AM](#)

SENATOR TOBIN stated that she agreed and noted that multiple states are currently considering similar legislation. She highlighted Florida's approach, which includes both civil and criminal provisions. Florida's law makes failure to include the required disclaimer a first-degree misdemeanor, which she believes offers stronger protection for Alaskans considering a run for office in the upcoming election cycle. She added that

Florida assigns the Division of Administrative Hearings to adjudicate violations.

[10:39:27 AM](#)

SENATOR TOBIN emphasized that her concern extends beyond citizens who might create deepfakes to include outside actors and agitators, whose influence on local elections has been evident for nearly two decades. She expressed concern that relying solely on civil penalties and leaving enforcement to the individual harmed by a deepfake removes an important tool for protecting candidates. She pointed out that, as a candidate, she would not have the resources to pursue legal action against foreign entities, such as the Russian government, or platforms like TikTok if they disseminated deepfakes aimed at influencing the election.

SENATOR TOBIN urged legislators to consider the full implications of the issue, advocating for a broader, more inclusive approach rather than a single step forward. She concluded by stating her belief that deepfakes and artificial intelligence pose an existential threat to free and fair elections.

[10:40:42 AM](#)

MR. BALLINGER stated he agreed one hundred percent. He expressed concern about what is realistically possible and whether legitimate concerns can be incorporated now or will have to wait until the next legislative session. He noted that the sponsor has repeatedly said HB 358 is a starting point. He acknowledged that lawmakers do not yet fully understand all the possibilities or issues involved, but emphasized the importance of getting something on the record to build upon.

MR. BALLINGER added that if the committee chooses to make an amendment and believes it can get HB 358 to the Senate floor and back to the House for concurrence, the sponsor is likely open to that. He concluded by saying it is not an issue with fundamental disagreement; most people are on the same page, and the focus is on how best to achieve legislation.

[10:41:59 AM](#)

SENATOR TOBIN said she is reviewing the legislation currently being considered in 27 other states, many of which have passed or introduced similar measures. She stated she will continue examining those efforts to identify ways to provide relief and protection to all of Alaska's potential candidates as quickly as possible during the upcoming election cycle.

10:42:19 AM

CHAIR CLAMAN opened public testimony on HB 358; finding none, he closed public testimony.

10:42:38 AM

CHAIR CLAMAN held HB 358 in committee.

10:43:00 AM

There being no further business to come before the committee, Chair Claman adjourned the Senate Judiciary Standing Committee meeting at 10:43 a.m.