

# HOUSE BILL NO. 5144

October 12, 2023, Introduced by Reps. Tsernoglou, Rheingans, Price, Rogers, Conlin, Martus, Brixie, Puri, Paiz, Hope, Bierlein, Schuette, Scott, Andrews, McFall, Brabec, Morse, Koleszar, Haadsma, Wilson, Dievendorf, Morgan, Aragona, Hood, Skaggs, Byrnes, Steckloff, Tyrone Carter, MacDonell, Hoskins, Brenda Carter, O'Neal, Neeley, Shannon and Farhat and referred to the Committee on Elections.

A bill to amend 1954 PA 116, entitled  
"Michigan election law,"  
(MCL 168.1 to 168.992) by adding section 932f.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1           Sec. 932f. (1) Except as otherwise provided in subsection (2),  
2 a person shall not distribute, or enter into an agreement with  
3 another person to distribute, materially deceptive media if all of  
4 the following apply:

5           (a) The person knows, or recklessly disregards whether, the

1 media falsely represents a depicted individual.

2 (b) The distribution occurs within 90 days before an election.

3 (c) The person intends the distribution to harm the reputation  
4 or electoral prospects of a candidate in an election, and the  
5 distribution is reasonably likely to cause that result.

6 (d) The person intends the distribution to change the voting  
7 behavior of electors in an election by deceiving the electors into  
8 incorrectly believing that the depicted individual in fact engaged  
9 in the speech, conduct, or appearance depicted, and the  
10 distribution is reasonably likely to cause that result.

11 (2) The prohibition in subsection (1) does not apply if all of  
12 the following conditions are met:

13 (a) The media includes a disclaimer informing the viewer that  
14 the media has been manipulated by technical means and depicts  
15 speech or conduct that did not occur. The following disclaimer is  
16 sufficient, but not necessary, to satisfy the requirement under  
17 this subdivision:

18 "This \_\_\_\_\_ (image, audio, or video) has been  
19 manipulated by technical means and depicts speech or conduct that  
20 did not occur."

21 (b) If the media is a video, the disclaimer meets all of the  
22 following requirements:

23 (i) Appears throughout the entirety of the video.

24 (ii) Is clearly visible to and readable by an observer.

25 (iii) Is in letters at least as large as the majority of any  
26 text communication, or if there is no other text communication, in  
27 a size that is easily readable by the average viewer.

28 (c) If the media consists only of audio and contains no image  
29 or video, the disclaimer is read at the beginning and end of the

1 media in a clearly spoken manner and in a pitch that can be easily  
2 heard by the average listener.

3 (d) If the media is an image, the disclaimer meets both of the  
4 following requirements:

5 (i) Is clearly visible to and readable by the average viewer.

6 (ii) If the media contains other text, is in letters at least  
7 as large as the majority of the other text.

8 (3) A person that violates this section is guilty of a crime  
9 as follows:

10 (a) For a first violation, a misdemeanor punishable by  
11 imprisonment for not more than 90 days or a fine of not more than  
12 \$500.00, or both.

13 (b) If a violation occurs within 5 years of a previous  
14 conviction for a violation under this section, a felony punishable  
15 by imprisonment for not more than 5 years or a fine of not more  
16 than \$1,000.00, or both.

17 (4) Subject to subsection (8), the attorney general, or a  
18 depicted individual or a candidate for office who has been injured  
19 or is likely to be injured by the distribution of materially  
20 deceptive media, may seek permanent injunctive relief against a  
21 person that violates this section in any of the following courts:

22 (a) The circuit court for Ingham County.

23 (b) The circuit court for the county in which a party to the  
24 alleged violation resides.

25 (c) The circuit court for the county in which the materially  
26 deceptive media at issue could deceive and influence electors in an  
27 upcoming election.

28 (5) Upon the filing of a complaint for injunctive relief under  
29 subsection (4), the court must review the complaint to determine

1 whether the complaint is frivolous. If the court determines that  
2 the complaint for injunctive relief is frivolous, the court shall  
3 issue an order suspending the defendant's obligation to respond to  
4 the complaint and shall order the plaintiff to show cause why the  
5 complaint for injunctive relief should not be dismissed. If the  
6 plaintiff's response to the court assures the court that the  
7 complaint for injunctive relief is not frivolous, the court shall  
8 direct the defendant to answer to the complaint for injunctive  
9 relief. If the plaintiff fails to respond to the court or the  
10 plaintiff's response to the court confirms that the complaint for  
11 injunctive relief is frivolous, the court shall dismiss the  
12 complaint for injunctive relief.

13 (6) If a court finds that a complaint for injunctive relief is  
14 frivolous under subsection (5), the court, in addition to  
15 dismissing the complaint, may award costs and attorney fees to the  
16 defendant and may issue any appropriate sanctions permitted under  
17 the Michigan court rules or the court's inherent authority against  
18 the plaintiff and the plaintiff's attorney.

19 (7) A plaintiff seeking permanent injunctive relief under  
20 subsection (4) must prove by clear and convincing evidence that the  
21 defendant against whom the injunction is sought knew, or recklessly  
22 disregarded whether, the media at issue falsely represents the  
23 depicted individual.

24 (8) A court shall not issue a preliminary injunction under  
25 this section.

26 (9) As used in this section:

27 (a) "Depicted individual" means an individual who is falsely  
28 represented in a materially deceptive media.

29 (b) "Election" includes, but is not limited to, a federal,

1 statewide, legislative, judicial, county, or local election or  
2 primary election.

3 (c) "Materially deceptive media" means any image, audio, or  
4 video that meets all of the following requirements:

5 (i) Falsely depicts an individual engaging in speech, conduct,  
6 or appearance in which the depicted individual did not in fact  
7 engage.

8 (ii) A reasonable viewer or listener would incorrectly believe  
9 that the depicted individual engaged in the speech, conduct, or  
10 appearance depicted.

11 (iii) Was produced by substantially relying on technical means  
12 other than another individual's ability to physically or verbally  
13 impersonate the depicted individual.